

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7600

United States Court of Appeals

For the Second Circuit

B

COLUMBIA BROADCASTING SYSTEM, INC.,
Plaintiff-Appellant,
against

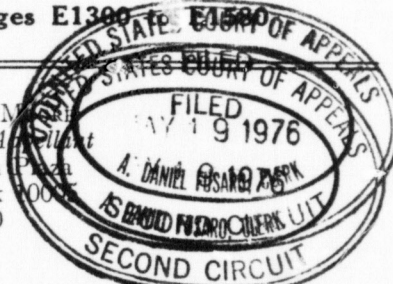
AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

JOINT APPENDIX

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CBS v. ASCAP

ASCAP Exhibit No. 199

Contract (unexecuted) dated June 1, 1965, between
3M and Comptom Music Corp.

AGREEMENT made this 15th day of June, 1965

by and between COMPTON MUSIC CORP., a corporation with principal offices at 250 West 57th Street, New York, New York (hereinafter referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware Corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for the purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes throughout the United States, its territories and possessions for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (c) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither BM, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by BM during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date BM's distributor or dealer delivers the background music tape to the user or purchaser.

(d) BM agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. BM further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to

continue to perform the background music tape publicly for public after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, BM will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at BM's office but only to the extent necessary for Licensor to verify BM's statements and in connection with Licensor's own records and not for delivery to any third party.

7. BM agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. BM agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at BM's office where such books and records are regularly maintained during BM's regular business hours, by a Certified Public Accountant and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify BM at least five (5) years in advance of the expiration of its right to grant the within license with respect to any individual musical

composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees to compute and to pay royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

11. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term. 3M agrees that such notice may not be given later than August 1, 1965. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

12. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the number of Licensor's compositions used therein and of any subsequent additions or deletions.

13. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

14. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

15. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

16. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall

have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, moving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

17. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as heretofore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

18. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

19. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyright, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures

E1308

tures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By: _____

COMPTON MUSIC CORP.

By: _____

E1309

CBS v. ASCAP

ASCAP Exhibit No. 201

Contract dated June 5, 1965, between 3M and
Consolidated/Dorsey Bros.

AX 2.01 id
E1310

1965.

AGREEMENT made this 5th day of June

by and between CONSOLIDATED MUSIC PUBLISHERS, INC. and DORSEY BROS. MUSIC, INC. both of 240 West 55th Street, New York, New York (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, A Delaware corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto which is identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for the purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least 15 years after the effective date hereof.

E1311

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder. Recordings hereunder exceeding three (3) minutes per selection will be deemed two (2) compositions for the purposes of this paragraph.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactu

by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the

background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees that during the term hereof it will use a minimum of Twenty (20) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. In the event 3M does not include the above minimum on subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days' written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of ten (10) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9.

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together

with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensor hereunder shall be no less than Six Thousand Dollars (\$6,000.00). To the extent that the royalties earned by and advanced to Licensor hereunder shall be less than the said guaranteed amount, 3M shall make payment to Licensor upon the delivery of the second royalty statement rendered during each contract year hereunder.

13. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term which notice shall be accompanied by payment to Licensor of Three Thousand Dollars (\$3,000.00) as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. 3M shall be required, if within three (3) years after the date hereof it goes into the background music business as contemplated by this agreement, to give notice to Licensor of the commencement of the term hereof, provided, however, that 3M shall not be required to give such notice if a reasonably satisfactory library cannot be assembled as a result of 3M's entering into similar agreements with other music publishers. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract

year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations, and warranties expressly made by Licensor.

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, or a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

19. 3M agrees that in the event 3M agrees to pay a higher rate of royalty, or a higher guarantee in proportion to the rate and to the minimum number of compositions, to any person, firm or corporation than is payable hereunder for the use of compositions similar in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty or guarantee, this agreement will be deemed amended to incorporate such higher rate, guarantee, terms and/or conditions.

20. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one

E1318

Division of Minnesota Mining and Manufacturing Company to another.
This agreement shall benefit and be binding upon the parties hereto,
their representatives and assigns as hereinbefore limited. Any as-
signment or transfer of any of the compositions or the copyrights
therein shall be subject to the terms hereof.

21. 3M shall not be required to serve or file any notice
required to be served or filed by any copyright act or law provided
that Licensor has the right to waive the serving or filing of such
notice.

22. Licensor represents and warrants that the proper ex-
ercise by 3M of the rights herein granted to it will not constitute
a violation or infringement of any right, title or interest, includ-
ing, without limitation, all copyrights, common-law rights and sta-
tutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signa-
tures to this contract the date first above written.

CONSOLIDATED MUSIC PUBLISHERS, INC.

By: *Herbert M. ...*

DORSEY BROS. MUSIC, INC.

By: *Herbert M. ...*

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTUR-
ING COMPANY, A Delaware Corporati

By: *Rid ...*
R. H. HERZOG, President

E1319

CBS v. ASCAP

ASCAP Exhibit No. 202

Contract dated July 26, 1965, between 3M and
Criterion Music Corp.

AX 202 id

E1320

AGREEMENT made this 26th day of July , 1965

by and between CRITERION MUSIC CORPORATION of 6124 Selma Avenue
Hollywood 28, California (hereinafter referred to as "Licensor")
and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND
MANUFACTURING COMPANY, A Delaware Corporation of 2501 Hudson Road,
St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for the purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

PX 59 id

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes throughout the world for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to

continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of ^{One cent (1¢)} ~~Three Cents~~ for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical

composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees to compute and to pay royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

11. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term. 3M agrees that such notice may not be given later than August 1, 1965. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law is amended to require the licensee to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

12. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

13. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

14. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor. (All warranties and indemnities are limited in amount to the amount of money received by Criterion Music Corporation for this contract.)

15. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

16. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licen-

sor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

17. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

18. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

19. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyright, common-law rights and statutory rights of any other person, firm or corporation.

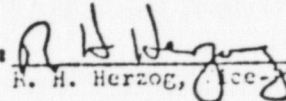
IN WITNESS WHEREOF, the parties have affixed their signa-

tures to this contract the date first above written.

E1327

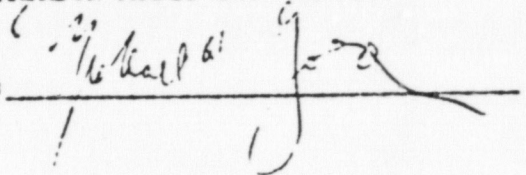
THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By:


R. H. Herzog, Vice-President

CRITERION MUSIC CORPORATION

By:



E1328

CBS v. ASCAP

ASCAP Exhibit No. 203

Contract dated August 19, 1965, between 3M and
Four Jays Music Inc.

PLEASE INITIAL

RAH

FLEA

RAH

AK 203 id

E1329

WITNESSETH made this 17 day of August, 1965, by and between FOUR JAYS MUSIC INC. of 1616 North Argyle, Hollywood 28, California (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to arrange, reproduce, record and/or use the musical compositions and arrangements listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical right".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or other law in connection with its exercise of the mechanical rights granted hereunder.

PLEASE INITIAL

RAH

B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machines"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tape to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - 3M agrees to advise the Purchaser of

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each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

PLEASE INITIAL

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4. LICENSOR'S WARRANTIES

- A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.
- B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

E1333

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the aforesaid royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

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to commence distribution and sale of Tapes shall be not less than

SIX THOUSAND

Dollars (\$ 6,000.00). 3M

shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:

On execution hereof - Two Thousand Dollars (\$2,000.00)

One year thereafter - Two Thousand Dollars (\$2,000.00)

Two years thereafter - Two Thousand Dollars (\$2,000.00)

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

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D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is not delivered, 3M's sole liability hereunder shall be for the installments of the guaranteed minimum royalty pursuant to Paragraph 5(C) hereof payable prior to October 1, 1966. In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

PLEASE INITIAL



provided, however, that for a period of six (6) months after such termination, 3M shall have the exclusive right to continue to distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to sub-division (A) of this Paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by 3M during the term of this agreement publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and that 3M shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that 3M shall have such additional period of time as may reasonably be required to cure such breach, on condition that 3M diligently take all reasonable steps to cure such breach and/or to prevent

PLEASE INITIAL

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the recurrence of similar breaches. In the event 3M fails to comply with the foregoing condition, Licensor may terminate this agreement and may recover from 3M all sums due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of 3M to another division.

10. AUTOMATIC MODIFICATIONS - 3M agrees that in the event that

3M agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to subdivisions (A) and (B) of Paragraph 5 hereof for the use of Compositions similar in duration and type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms and conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

By: R. E. Herzog

R. E. Herzog, Vice-President
FOUR JAYS MUSIC INC.

By: Henry Warren

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CBS v. ASCAP

ASCAP Exhibit No. 204

Contract dated April 14, 1966, between 3M and
Frank Music Corp.

AX 204 id

E1840

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AGREEMENT made this 14th day of April , 1966 by and between FRANK MUSIC CORP., SAUNDERS PUBLICATIONS, INC. and FRANK MUSIC CORP. and RIMMER CORPORATION, a joint venture, all New York Corporations of 119 West 57th Street, New York, N. Y. (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware corporation , of 2501 Hudson Road, St. Paul 15, Minnesota (hereinafter referred to as "3M").

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to reproduce, record and/or use the musical compositions and arrangements listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical right".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or other law in connection with its exercise of the mechanical rights granted hereunder.

B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchases of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M. (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained. Furthermore no Tape can be sold by 3M or any of its dealers after the sell-off period provided hereinafter.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated to 3M in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to singing, entertaining, dancing, skating, or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee, minimum or cover charge is charged is intended to be

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observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or (iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, Or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape lease to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

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3. NOTICE TO PURCHASERS - 3M agrees to advise the purchaser of each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees subsequently to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5 (D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any copyright owned or controlled by any third party.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

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it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the aforesaid royalty shall be increased to equal such higher royalty for all Tapes sold subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6 (A) hereof that 3M elects

to commence distribution and sale of Tapes shall be not less than FORTY-FIVE THOUSAND Dollars (\$45,000). 3M shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:

Upon notice of commencement of the initial term hereof -	\$15,000
One year thereafter -	\$15,000
Two years thereafter -	\$15,000

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6 (A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense. E1346 ..

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) After the expiration of the initial term, the term of this agreement shall be automatically extended from year to year, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension, provided, however, that for a period of six (6) months after such termination, 3M, its dealers and distributors, shall have the exclusive right to continue to distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

D. Rights of Purchasers upon Expiration of Term: Notwith-
standing the expiration of the term of this agreement pursuant **E1347**
to sub-division (A) of this Paragraph, it is expressly understood
and agreed that each purchaser of a Tape authorized by 3M during
the term of this agreement publicly to perform the Compositions
embodied on such Tape (subject to the limitations herein contained)
shall have the right publicly to perform the Compositions embodied
on such Tape (subject to the limitations herein contained) for
a period not in excess of three (3) years after 3M, its distri-
butors, sub-distributors or dealers deliver such Tape to such
purchaser, and Licensor's warranty contained in Paragraph 4 (C)
hereof shall continue for the benefit of such purchaser for a
concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor
agrees that 3M shall receive written notice specifying any
alleged breach by 3M of any provision of this agreement and that
3M shall have thirty (30) days after receipt of such notice to
cure such alleged breach. ~~In the event that such alleged breach~~
~~cannot be cured within thirty (30) days, Licensor agrees that 3M~~
~~shall have such additional period of time as may reasonably be~~
~~required to cure such breach, on condition that 3M diligently~~
~~take all reasonable steps to cure such breach and/or to prevent~~
~~the recurrence of similar breaches.~~

7. USE OF COMPOSITIONS - This agreement is not intended and shall
not be construed to obligate 3M to use any of the Compositions on
the Tapes. 3M agrees to notify Licensor, upon the completion of
the programming of each Tape, of the titles of the Compositions
embodied therein, and to notify Licensor of any subsequent additions
or deletions to or from the Compositions embodied therein. ~~Licensor~~

~~agrees to notify 3M from time to time of any additional compositions~~
~~to be added~~ Schedule A.

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8. INDemnITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor. Promptly upon assertion of such claim action or proceeding - 3M agrees to notify Licensor and offer to Licensor an opportunity to join in the defense thereof. No settlement shall be charged to Licensor unless Licensor has previously consented to the terms of settlement.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of 3M to another division and provided the assignee assumes all liabilities hereunder.

10. AUTOMATIC MODIFICATIONS - 3M agrees that in the event that 3M agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to sub-division (A) and (B) of Paragraph 5 hereof for the use of Compositions similar in duration and type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties,

this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

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11. This agreement shall be governed in accordance with the Laws of the State of New York applicable to agreements wholly to be performed therein.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

By: R. H. Herzog
R. H. Herzog, Vice President

FRANK MUSIC CORPORATION
By: William Korne
SAUNDERS PUBLICATIONS, INC.

By: William Korne

FRANK MUSIC CORP. and
REHMER CORPORATION,
a joint venture

By: William Korne

SCHEDULE "A"

E1350

- | | |
|--------------------------------------------|----------------|
| 1. UNCHAINED MELODY | Zaret-North |
| 2. WHAT ARE YOU DOING NEW YEARS" EVE | Loesser |
| 3. WHATEVER LOLA WANTS | Adler-Ross |
| 4. WONDERFUL COPENHAGEN | Loesser |
| 5. TWO LOST SOULS | Adler-Ross |
| 6. RAGS TO RICHES | Adler-Ross |
| 7. (THE) MOON OF MANAKOORA | Loesser-Newman |
| 8. TILL THERE WAS YOU | Willson |
| 9. STRANGER IN PARADISE | Wright-Forrest |
| 10. STEAM HEAT | Adler-Ross |
| 11. STANDIN' ON THE CORNER | Loesser |
| 12. SPRING WILL BE A LITTLE LATE THIS YEAR | Loesser |
| 13. SOMEBODY, SOMEWHERE | Loesser |
| 14. SEVENTY-SIX TROMBONES | Willson |
| 15. ORANGE COLORED SKY | Delugg-Stein |
| 16. ONCE IN LOVE WITH AMY | Loesser |
| 17. ON A SLOW BOAT TO CHINA | Loesser |
| 18. NO TWO PEOPLE | Loesser |
| 19. THE NEW ASHMOLEAN MARCHING SOCIETY | Loesser |
| 20. MY DARLING, MY DARLING | Loesser |
| 21. THE MOST HAPPY FELLA | Loesser |
| 22. MAKE A MIRACLE | Loesser |
| 23. LUCK BE A LADY | Loesser |
| 24. LIDA ROSE | Willson |
| 25. JOEY, JOEY, JOEY | Loesser |

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- | | |
|------------------------------------|----------------------|
| 26. I'VE NEVER BEEN IN LOVE BEFORE | Loesser |
| 27. IF I WERE A BELL | Loesser |
| 28. HOOP-DEE-DOO | Loesser-Delugg |
| 29. HEY THERE | Adler-Ross |
| 30. HERNANDO'S HIDEAWAY | Adler-Ross |
| 31. HEART | Adler-Ross |
| 32. GOODNIGHT, MY SOMEONE | Willson |
| 33. CRY ME A RIVER | Hamilton |
| 34. A BUSHEL AND A PECK | Loesser |
| 35. BOO-HOO | Heyman-Lombardo-Loeb |
| 36. BAUBLES, BANGLES AND BEADS | Wright-Forrest |
| 37. BABY IT'S COLD OUTSIDE | Loesser |
| 38. AND THIS IS MY BELOVED | Wright-Forrest |
| 39. NEAR TO YOU | Adler-Ross |
| 40. A WOMAN IN LOVE | Loesser |
| 41. MARIAN, THE LIBRARIAN | Willson |

E1352

CBS v. ASCAP

ASCAP Exhibit No. 205

Contract dated October 1, 1965, between 3M and
Holloway Publishers, Inc.

AGREEMENT made this 1st day of October, 1965

by and between HOLLOWAY MUSIC PUBLISHERS, INC., a California corporation with principal offices at 8766 Holloway Drive, Hollywood, California (hereinafter referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware Corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M.")

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedules attached hereto and identified as

Schedule "A" - (Where Licensor is the Original Publisher of original musical compositions, composed by a member of GEMA)

Schedule "B" - (Where Licensor is the Sub-Publisher of original musical compositions, with respect to which both the Original Publisher and the composer are members of GEMA)

Schedule "C" - (Arrangements of musical selections in the public domain, arranged by a member of GEMA)

Schedule "D" - (Where Licensor is the Original Publisher of original musical compositions, which were not composed by a member of GEMA).

Schedule "E" - (Arrangements of musical selections in the public domain which were not arranged by a member of GEMA).

upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for the purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes throughout the United States, its territories and possessions for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this paragraph 4.

5. 3M agrees to pay royalties for the rights licensed pursuant to Paragraph 4 above at the following rates for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

- E1355
- (a) With respect to compositions listed on Schedule "A":
 - (1) 1¢ to Licensor
 - (2) 1¢ to AMRA for the account of the composer
 - (b) With respect to compositions listed on Schedule "B":
 - (1) 1¢ to Licensor
 - (2) 1¢ to AMRA for the account of the Original Publisher and the composer.
 - (c) With respect to arrangements listed on Schedule "C":
 - (1) 1¢ to Licensor
 - (2) 1¢ to AMRA for the account of the arranger
 - (d) With respect to compositions listed on Schedule "D," 2¢ to Licensor.
 - (e) With respect to arrangements listed on Schedule "E," 2¢ to Licensor.

6. (A) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(B) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no

right to convey this license to others by operation of law or otherwise.

(C) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(D) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. (A) 3M agrees to pay royalties for the rights granted

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pursuant to Paragraph 6 above at the following rates for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

- (a) With respect to compositions listed on Schedule "A":
 - (1) 1½¢ to Licensor
 - (2) 1½¢ to GEMA for the account of the composer
- (b) With respect to compositions listed on Schedule "B":
 - (1) 3/4¢ to Licensor
 - (2) 3/4¢ to GEMA for the account of the Original Publisher
 - (3) 1½¢ to GEMA for the account of the composer
- (c) With respect to arrangements listed on Schedule "C", no royalties shall be payable.
- (d) With respect to compositions listed on Schedule "D", 3¢ to Licensor.
- (e) With respect to arrangements listed on Schedule "E", no royalties shall be payable.

(B) In addition to any other royalties agreed to be paid hereunder by 3M to Licensor, 3M agrees to pay an artist's royalty to Licensor at the rate of One Cent (1¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of compositions listed on Schedule "C" and/or "E" annexed hereto which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its

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rights to grant the within license with respect to any individual musical composition listed on the Schedules annexed hereto.

Licensors shall also from time to time notify 3M of additions to such Schedules.

10. 3M agrees to compute and to pay royalties to Licensors within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensors showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition. Copies of each such statement, insofar as it pertains to compositions listed on Schedules "A", "B", and "C" annexed hereto, shall be delivered to GEMA and AMRA.

11. The term of this agreement shall be one (1) year beginning upon the delivery to Licensors by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensors of Ten Thousand Dollars (\$10,000.00) as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

12. 3M shall notify Licensor, on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

13. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder.

14. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

15. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

16. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach with thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more

instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

17. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

18. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

19. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyright, common-law rights and statutory rights of any other person, firm or corporation.

20. This agreement constitutes the entire understanding of the parties concerning the subject matter hereof and supercedes all prior understandings and agreements, whether oral or written, with respect to background music tapes.

IN WITNESS WHEREOF, the parties have affixed their signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By: R. H. Herzog
R. H. Herzog, Vice President

HOLLOWAY MUSIC PUBLISHERS, INC.

CBS v. ASCAP

E1361.

ASCAP Exhibit No. 206

Contract dated January 25, 1965, between 3M and
Jewel Music Publishing Co.

AK 206 id
E1362

AGREEMENT made this 25 day of January, 1965
by and between JEWEL MUSIC PUBLISHING CO. INC. of 1619 Broadway,
New York 19, New York (hereinafter referred to as "Licensor") and
the DUPLICATING PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation of 2501 Hudson Road, St.
Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

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4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

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(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to

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continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained, during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical

composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees that during the term hereof it will use a minimum of Ten (10) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. In the event 3M does not include the above minimum on subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of ten (10) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9.

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensor hereunder shall be no less than Three Thousand Dollars (\$3,000.00). To the extent that the royalties earned by and advanced to Licensor hereunder shall be less than the said guaranteed amount, 3M shall make payment to Licensor upon the delivery of the second royalty statement rendered during each contract year hereunder.

13. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensor of One Thousand Five Hundred Dollars (\$1,500.00) as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. 3M shall be required, if within three (3) years after the date hereof it goes into the background music business as contemplated by this agreement, to give notice to Licensor of the commencement of the term hereof, provided, however, that 3M shall not be required to give such notice if a reasonably satisfactory library cannot be assembled as a result of 3M's entering into similar agreements with other music publishers. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term or any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such

higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. 3M agrees that in the event 3M agrees to pay a higher rate of royalty, or a higher guarantee in proportion to the rate and to the minimum number of compositions, to any person, firm or corporation than is payable hereunder for the use of compositions similar

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in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty or guarantee, this agreement will be deemed amended to incorporate such higher rate, guarantee, terms and/or conditions.

19. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

20. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or

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transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

21. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

22. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyrights, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By: R. D. Hargis

JEWEL MUSIC PUBLISHING CO. INC.

By: Paul Hargis

E1371

CBS v. ASCAP

ASCAP Exhibit No. 207

Contract dated July 26, 1965, between 3M and
Joy Music, Inc.

AK 207 id

ET372

AGREEMENT made this 26th day of July, 1965,
by and between JOY MUSIC, INC., a New York corporation, of
1790 Broadway, New York 19, New York (hereinafter referred
to as the "Licensor") and the DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware
corporation, of 2501 Hudson Road, St. Paul 19, Minnesota
(hereinafter referred to as "3M").

1. The Licensor warrants and represents that it
owns or controls the right under the United States Copyright
Law to authorize the making of recordings of the musical
compositions listed on "Exhibit A" annexed hereto and
made a part hereof (hereinafter referred to as "Said
Compositions") for the purpose of public performance for
profit.

2. The Licensor further warrants and represents
that it has the non-exclusive right under the United States
Copyright Law to authorize the public performance of Said
Compositions for profit, and that it has the right to make
this agreement.

3. The Licensor further warrants and represents
that it will continue to own or control the rights described
in Paragraphs 1 and 2 above for at least five (5) years
after August 1, 1965.

4. The Licensor hereby authorizes in 3M the
non-exclusive right to make recordings of Said Compositions
for the purpose of public performance for profit (hereinafter
referred to as "Said Recordings") and to vend Said Recordings,
together with the non-exclusive right to publicly perform
Said Compositions for profit by means of Said Recordings and

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to authorize purchasers of Said Recordings to so perform
Said Compositions. The aforesaid rights are granted **E1373**
upon and limited to the following terms and conditions:

(a) The authorizations herein contained are limited to the United States, its territories and possessions.

(b) The right to make Said Recordings shall be limited to the making of so-called pre-recorded tapes (hereinafter referred to as "Said Tapes") made for use in a machine manufactured by 3M and presently known as the M-700, including later designs of said machine manufactured by 3M, and sold for use in establishments which will perform Said Compositions publicly as background music. The authorization to publicly perform Said Compositions for profit is limited to performances by means of Said Tapes used in such machine.

(c) Subject to paragraph 4(d) hereof, 3M agrees to make payment to the Licensor for the rights authorized pursuant to this agreement of a royalty of five cents (5¢) per use of each of Said Compositions in the making of each of Said Tapes, within sixty (60) days after January 31 and July 31 of each year during the term of this agreement. Said royalty includes three cents (3¢) for the non-exclusive right to publicly perform such of Said Compositions for profit as herein granted. Simultaneous with each such payment and in any event, within the time prescribed therefor, 3M shall render a statement to the Licensor evidencing in detail the number of Said Compositions used, the number of Said Tapes made and the total number of uses of each of Said Compositions in the making of Said Tapes.

of Twenty Thousand (\$20,000.00) Dollars on the execution hereof, on August 1, 1966 and on **E1374** August 1, 1967, which payments shall constitute minimum guaranteed royalties hereunder. No further royalties shall be payable by 3M until such minimum guaranteed compensation has been recouped out of the royalties accruing to the Licensor pursuant to paragraph 4(c) of this agreement.

(e) 3M, its distributors, and any purchaser of Said Tapes, shall have no right to record or perform Said Compositions in synchronization with any means of visual reproduction, or to broadcast or televise Said Compositions, or to license others to do so, and the Licensor does not authorize any right of public performance for profit except as background music pursuant to the terms of this agreement. 3M, its distributors, and any purchaser of Said Tapes shall have no right to perform or use Said Compositions through central studios or by wired use, or in places where admission fees are charged. The authorization to publicly perform Said Compositions for profit shall be restricted to the purchasers of Said Tapes and they shall have no right to transfer this license to others by operation of law or otherwise.

(f) With respect to each of Said Tapes sold by 3M during the term hereof, the right of public performance for profit granted by the Licensor hereunder shall be limited to the period

distributor or dealer delivers Said Tape E1375
the purchaser. In any event, such right shall
not extend beyond July 31, 1971.

(g) 3M shall indicate to the purchaser of
each of Said Tapes, the extent and limitations of
the authorization to perform Said Compositions
hereunder and shall require each such purchaser to
agree to such limitations in writing. 3M further
agrees to give advance written notice to each
purchaser of Said Tapes of the expiration of such
purchaser's rights hereunder. Such notice shall
specifically advise each purchaser that it is a
violation of the United States Copyright Law to
continue to publicly perform Said Compositions for
profit by the use of Said Tapes after the expiration
date. Upon the request of the Licensor or its
duly authorized agent, at reasonable times and
on reasonable notice, 3M will make available at
its offices in St. Paul, Minnesota, a list of
all purchasers of Said Tapes, their addresses, the
date of purchase of each of Said Tapes, and copies
of all notices of termination sent by 3M pursuant
to this paragraph. The Licensor may copy such list
or make photocopies thereof, at the Licensor's
sole expense, at 3M's office, but not for delivery
to any third party and only to the extent necessary
for the Licensor to verify 3M's statements or for
purposes of the Licensor's own records.

(h) 3M shall maintain accurate books and
records relating to the making of Said Recordings,

which books and records may be inspected, audited and copied by the Licensee at 3M E1376 office where such books and records are regularly maintained, during 3M's regular business hours, through a certified public accountant or other authorized agent, and at the Licensor's sole expense.

(1) The term of this agreement shall be for the period of three (3) years beginning August 1, 1965. Upon the termination of this agreement 3M shall cease making Said Tapes. However, 3M shall have the right for a period of six (6) months following the said termination to sell any of Said Tapes in 3M's possession or in the possession of 3M's dealers or distributors, subject, however, to all of the terms of this agreement. The termination of this agreement shall not affect the right of the purchasers of the tapes to perform the compositions as authorized herein.

(j) This agreement is not intended and shall not be construed to obligate 3M to use any of Said Compositions hereunder except as described above, or to supersede or in any way to affect any prior license between the parties hereto with respect to Said Compositions.

(k) The Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim successfully asserted by any person, firm or concern which is

and warranties expressly made by the Licensor. R.E1377.
The Licensor's total liability with respect to any
of Said Compositions shall, however, be limited to
the amount of the royalties paid hereunder for the
use thereof.

(l) 3M in exercising the rights herein
granted to it, shall have the right to edit,
adapt, arrange and modify Said Compositions in a
reasonable manner for the purpose of making them
suitable for the background music use contemplated
hereunder.

(m) 3M agrees that in the event 3M agrees to
pay a higher rate of royalty, or a higher yearly
guarantee in proportion to the number of compositions,
to any person, firm or corporation than is payable
hereunder, or gives to any person, firm or
corporation more favorable other terms or conditions
affecting rate of royalty or guarantee, this
agreement will be deemed amended to incorporate
such higher rate, guarantee, terms or conditions.

(n) In addition to all other rights and
remedies in law or in equity, in the event that
3M shall breach any of the terms or conditions of
this agreement and shall fail to cure such breach
within thirty (30) days after the sending by the
Licensor to 3M, by correctly addressed registered
mail, of written notice thereof, the Licensor
may cancel this agreement forthwith, and upon such
cancellation all rights herein granted to 3M shall

terminate and 3M shall have no further right to E1378
enjoy any of the rights herein granted with respect
to any of Said Compositions, saving to the Licensor,
however, the right to recover from 3M all sums which
shall then be due or which may thereafter accrue
to the Licensor and the right to recover damages
for the breach, if any, of this agreement. Waiver
by the Licensor of full performance of this agree-
ment by 3M in any one or more instances shall not
be deemed a waiver of the right of the Licensor to
thereafter require full and complete performance
of this agreement.

5. This agreement shall not be assigned by 3M either
voluntarily or by operation of law, except as part of the
sale or transfer of its entire Duplicating Products Division
or from one Division of Minnesota Mining and Manufacturing
Company to another. Any assignment or transfer of any of
Said Compositions or the copyrights therein, shall be subject
to the terms hereof. This agreement shall benefit and be
binding upon the parties hereto, their representatives and
assigns as hereinbefore limited.

6. This agreement shall be construed and interpreted
under the laws of the State of New York, irrespective of the
place of execution or performance.

IN WITNESS WHEREOF, the parties have affixed their
signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By R. H. Herzog
R. H. Herzog, Vice President
JOY MUSIC, INC.

By [Signature]

E1379

CBS v. ASCAP

ASCAP Exhibit No. 208

Contract dated October 1, 1965, between 3M and
International Korwin Corp.

AX 208 W

E1380

AGREEMENT made this 1 day of October, 1955,
between INTERNATIONAL HOFWIN CORP. and INTERNATIONAL PUBLISHER
CORP. of 45 W. 56th St., N.Y.C. (hereinafter jointly and
severally referred to as "Licensor") and the PUBLISHING DEPT. of
DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware
corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter
referred to as "3M").

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the
non-exclusive right throughout the United States, its territories
and possessions, (hereinafter referred to as the "Territory") to
arrange, reproduce, record and/or use the musical compositions
and arrangements listed on Schedule A annexed hereto
(hereinafter individually and jointly referred to as the "Compo-
sitions") in whole or in part, as well as the titles thereof, upon
parts of instruments serving to produce and reproduce the composi-
tions mechanically and/or electrically, and the right to manufac-
ture, advertise, exploit, distribute and/or sell such parts of
instruments throughout the Territory. (The aforesaid rights are
hereinafter referred to as "mechanical right".) For purposes of
this agreement, "parts of instruments" shall be limited to pre-
recorded tapes intended for sale and use only for the purpose of
providing background music (hereinafter referred to as the "Tapes")
and the master recordings from which the Tapes are derived. 3M
shall not be required to serve or file any notice required to be
served or filed by any copyright act or other law in connection
with its exercise of the mechanical rights granted hereunder.

A. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - BM agrees to advise the Purchaser of

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and the

it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the aforesaid royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

to commence distribution and sale of Tapes shall be not less than

Six Thousand Four Hundred Eighty Dollars (\$ 6,480.00)

shall pay each guaranteed minimum royalty to Licensor in three (3)

equal installments as follows:

On execution hereof - Two Thousand One Hundred Sixty (\$2,160)

One year thereafter - Two Thousand One Hundred Sixty (\$2,160)

Two years thereafter - Two Thousand One Hundred Sixty (\$2,160)

BM shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by BM out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, BM shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: BM agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that BM elects to commence distribution and sale of Tapes, and continuing for so long as BM continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, BM shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding on all matters not specifically objected to.

B. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is not delivered, 3M's sole liability hereunder shall be for the installments of the guaranteed minimum royalty pursuant to Paragraph 5(C) hereof payable prior to October 1, 1966. In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

provided, however, that for a period of six (6) months after such termination, 3M shall have the exclusive right to manufacture, distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the compositions embodied thereon (subject to the limitations herein contained).

B. Right of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to sub-division (A) of this paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by 3M during the term of this agreement publicly to perform the compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and that 3M shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that 3M shall have such additional period of time as may be necessary to be required to cure such breach, on condition that 3M diligently make all reasonable steps to cure such breach and/or to prevent

the recurrence of similar breaches. In the event 3M fails to comply with the foregoing condition, Licensor may terminate this agreement and may recover from 3M all sums due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agree not to assign this agreement except as part of the transfer or sale of its entire unaffiliated assets or the division or the assignment of this agreement from one division of 3M to another division.

10. ENTIRE AGREEMENT - 3M agrees that in the event there

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to agree to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to subdivisions (A) and (B) of paragraph 3 hereof for the use of compositions similar in duration and type to the compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

By:

R. H. Herzog
R. H. Herzog, Vice-President

INTERNATIONAL KORWIN CORP.

INTERNATIONAL PAULINE CORP.

By:

Paul Pauline

E1390

CBS v. ASCAP

ASCAP Exhibit No. 209

Contract dated March 1, 1965, between 3M and
Leeds Music Corp.

E1391

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AGREEMENT made this 1st day of March, 1965

by and between LEEDS MUSIC CORPORATION and PICKWICK MUSIC CORPORATION of 322 West 48th Street, New York, New York (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, A Delaware Corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it ^{is} ~~has~~ a member of ASCAP. J12
~~the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to~~
make this agreement. J12

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

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assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments

which will perform musical compositions publicly).

tors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the pur-

continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained, during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical

composition combined on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

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10. 3M agrees that during the term hereof it will use a minimum of One Hundred (100) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. For purposes of this agreement a use by 3M of one of Licensor's compositions on its Christmas tape will constitute a use of a composition even though such composition may have been used by 3M on its initial issue of tapes. In the event 3M does not include the above minimum on subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of Six (6) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9.

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each

payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensor hereunder shall be no less than Thirty Thousand Dollars (\$30,000.00).

13. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensor of Thirty Thousand Dollars (\$30,000.00) as specified above as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. 3M shall be required, if within three (3) years after the date hereof it goes into the background music business as contemplated by this agreement, to give notice to Licensor of the commencement of the term hereof, provided, however, that 3M shall not be required to give such notice if a reasonably satisfactory library cannot be assembled as a result of 3M's entering into similar agreements with other music publishers. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty,

higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. 3M agrees that in the event 3M agrees to pay a higher rate of royalty, or a higher guarantee in proportion to the rate and quantity of compositions, to any person, firm or corpor-

in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty or guarantee, this agreement will be deemed amended to incorporate such higher rate, guarantee, terms and/or conditions.

19. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

20. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall be binding upon the parties and their heirs, assigns and legal representatives.

representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

21. BM shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

22. Licensor represents and warrants that the proper exercise by BM of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including without limitation, all copyrights, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By: R. H. Herzog
R. H. Herzog

LEEDS MUSIC CORPORATION

By: [Signature]

PICKWICK MUSIC CORPORATION

[Signature]

E1400

CBS v. ASCAP

ASCAP Exhibit No. 210

Contract dated March 15, 1966, between 3M and
Mills Music Inc.

U.S. DIST. COURT
S.D. OF N.Y.

DEC 1973

AX 210
E1401

95

AGREEMENT made this 15 day of MARCH, 1966, by
and between MILLS MUSIC INC. of 1619 Broadway, New York,
New York (hereinafter jointly and
severally referred to as "Licensor") and the DUPLICATING PRODUCTS
DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware
corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (herein-
after referred to as "3M").

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1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the
non-exclusive right throughout the United States, its territories
and possessions, (hereinafter referred to as the "Territory") to
arrange, reproduce, record and/or use the musical compositions
and arrangements listed on Schedule A annexed hereto
(hereinafter individually and jointly referred to as the "Compo-
sitions") in whole or in part, as well as the titles thereof, upon
parts of instruments serving to produce and reproduce the composi-
tions mechanically and/or electrically, and the right to manufac-
ture, advertise, exploit, distribute and/or sell such parts of
instruments throughout the Territory. (The aforesaid rights are
hereinafter referred to as "mechanical right".) For purposes of
this agreement, "parts of instruments" shall be limited to pre-
recorded tapes intended for sale and use only for the purpose of
providing background music (hereinafter referred to as the "Tapes")
and the master recordings from which the Tapes are derived. 3M
shall not be required to serve or file any notice required to be
served or filed by any copyright act or other law in connection
with its exercise of the mechanical rights granted hereunder.

B. Public Performance Right: Licensor hereby grants to 3M the non-exclusive right, throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes, by means of a machine presently known as the M-700 or similar machine, designed and/or re-designed by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be required to include any restaurant, store, or other portion of the premises for which no admission fee is charged.

(iii) any premises of a shopping center or other complex of shops, offices, or entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Composition embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - X agrees to advise the Purchaser of

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A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

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it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

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C. As to Public Performance Rights: Licensor warrants and represents that it owns in full the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

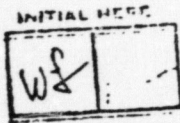
A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the aforesaid royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

E1406

to commence distribution and sale of Tapes shall be not less than Eighteen Thousand Dollars (\$18,000.00). 3M shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:



Upon notice of commencement of
the initial term period -

~~\$18,000.00~~ \$6,000.00

One year thereafter -

~~\$18,000.00~~ \$6,000.00

Two years thereafter -

~~\$18,000.00~~ \$6,000.00

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received

E1407

written notice from Licensor specifying Licensor's objections thereto, in which event said statement and payment shall be binding as to all matters not specifically objected to.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) After the expiration of the initial term, the term of this agreement shall be automatically extended from year to year, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

E1408

provided, however, that if the Licensee (B) terminates after such termination, 3M shall have the right to continue to distribute on such Tape (subject to the limitations of such termination) a Tape which is a copy of the Tape which was publicly distributed by the Licensee (B) prior to the termination of the Licensee (B).

B. RIGHTS OF THE LICENSEE After the expiration of the term of this agreement, the Licensee (B) shall have the right to use the Tape (subject to the limitations of such termination) for a period not in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and that 3M shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that 3M shall have such additional period of time as may reasonably be required to cure such breach, provided that 3M diligently take all reasonable steps to cure such breach and/or to prevent

the recurrence of similar breaches. In the event 3M fails to comply with the foregoing provisions, Licensor may terminate this agreement and pay no royalties to 3M due to Licensor from 3M prior to the termination.

7. SECOND SERIES LIBRARY - Licensor agrees to add thirty (30) Compositions in the two series to the Second Series Rhythmic Library, it being understood and agreed that the same thirty (30) Compositions need not appear in both such Second Series Libraries. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A. **

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor, with regard to the copyright ownership^{of} A compositions listed in Schedule A.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of 3M to another division.

10. AUTOMATIC REIFICATION - 3M agrees that in the event that

** This Agreement is in no way to be construed as a block license and pertains to compositions listed in Schedule A attached.

INITIAL HERE

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INITIAL HERE

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E1410

DUPLICATING FACILITY DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

37: Warren Ling 18
VICE PRESIDENT

INITIALS	
WJ	-

MINNESOTA MINING AND MANUFACTURING COMPANY
2501 Hudson Road
St. Paul, Minnesota

E1411

Dated: March 15, 1966

MILLS MUSIC INC.
1615 Broadway
New York, New York

Gentlemen:

You and we are simultaneously entering into an agreement concerning the use of at least thirty (30) of your compositions in the second series of our Background Music Program. This letter will confirm the understanding between you and us concerning a possible Third Series of our Background Music Program.

In the event that we release a Third Series of our Background Music Program, you agree to make available and we agree to use at least seventy-five (75) of your compositions in the Third Series Melodic Library and in the Third Series Rhythmic Library, it being understood and agreed that the same compositions need not be used in both the Third Series Melodic Library and the Third Series Rhythmic Library. In this connection, you and we shall enter into the same agreement which we are simultaneously entering with respect to the Second Series, provided, however, that Paragraph 10 concerning the use of compositions shall be modified to reflect the preceding sentence and that Paragraph 5(C) concerning the guarantee shall be modified in such manner that the guarantee is computed on a basis comparable to that used with other publishers which license compositions to us for use in the Third Series of our Background Music Program.

Very truly yours,

DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING COMPANY

Accepted And Agreed To:
MILLS MUSIC INC.

By: R. H. Herzog
R. H. Herzog, President

By: Warren Ling *xx*
VICE PRESIDENT

E1412

CBS v. ASCAP

ASCAP Exhibit No. 211

Contract dated March 15, 1966, between 3M and
Pic Corporation.

E1413

AGREEMENT made this 15th day of March, 1965, by and between PIC CORPORATION of 39 West 54th Street, (hereinafter referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware Corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the schedule attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

JL RHN.

E1414

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute, and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of two (2¢) cents for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar

3M R.H.

machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproductions, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing.

SLD mld.

E1416

3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to continue to perform the background music tapes publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of three (3¢) cents for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained, during 3M's regular business hours, by a certified

JL B.H.

public accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical composition contained on Schedule "A". Licensor shall also, from time to time, notify 3M of additions to Schedule "A".

10. 3M agrees that during the term hereof it will use a minimum of Fifty (50) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. In the event 3M does not include the above minimum on subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of ten (10) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9 above.

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof

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E1418

and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensor hereunder shall be no less than Fifteen Thousand (\$15,000.00) Dollars. To the extent that the royalties earned by and advanced to Licensor hereunder shall be less than the said guaranteed amount, 3M shall make payment to Licensor upon the delivery of the second royalties statement rendered during each contract year hereunder.

13. The term of this agreement shall be one (1) year, beginning upon the delivery to Licensor by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensor of Seven Thousand Five Hundred (\$7,500.00) Dollars as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. 3M shall be required, if within three (3) years after the date hereof it goes into the background music business as contemplated by this agreement, to give notice to Licensor of the commencement of the term hereof, provided, however, that 3M shall not be required to give such notice if a reasonably satisfactory library cannot be assembled as a result of 3M's entering into similar agreements with other music publishers.

See R411

E1419

This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term or any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify, defend and hold 3M harmless against any loss, damage, cost or expense incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

JK
RHW.

E1420

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. 3M agrees that in the event 3M agrees to pay a higher rate of royalty, or a higher guarantee in proportion to the rate and to the minimum number of compositions, to any person, firm or corporation than is payable hereunder for the use of compositions similar in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty or guarantee, this agreement will be deemed amended to incorporate such higher rate, guarantee, terms and/or conditions.

19. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate, and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver

YLR 2/11/14

by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

20. This agreement shall not be assigned by 3M, either voluntarily or by operation of law, except as part of the sale or transfer of its entire Duplicating Products Division, or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

21. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

22. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyrights, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their

Y. G. Adams

E1422

signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, a Delaware Corporation

By: R. J. [Signature]

PIC CORPORATION

By: John L. [Signature]

E1423

CBS v. ASCAP

ASCAP Exhibit No. 212

Contract dated August 3, 1966, between 3M and
Ray Music Co.

AX 212

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y. E1424

DEC 1973

Agreement made this 3rd day of August 1973
between RAY MUSIC COMPANY, a California corporation with principal offices located at 1117 E. West Canyon Boulevard, West Hollywood, California (hereinafter referred to as "Licensor") and the PUBLISHING PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, A Delaware Corporation with principal offices at 3501 Mallon Road, St. Paul 19, Minnesota (hereinafter referred to as " licensee").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on Schedules "A" and "B" annexed hereto upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyright musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tapes only, for purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Licensor further represents and warrants that it has the non-exclusive right to authorize the public performance of the compositions for profit or otherwise and that it has the right to make this agreement.

3. Licensor further represents and warrants that it shall continue to own or control the rights described in Paragraph 1. and shall survive for at least five (5) years after the expiration of the term of this agreement.

4. Licensor hereby grants to Licensee, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments hereinafter produced and reproduce the compositions mechanically and/or electronically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. Licensee agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to Licensee the non-exclusive right in the United States, its territories and possessions, to perform the compositions publicly for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licenses hereunder through a machine manufacturing or reproducing (and presently known as the M-70) (and similar machines designed and intended for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither BM, its distributor, nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in any combination with any means of visual representation, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions in sound recording studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by BM during the term hereof, the right of public performance for profit or otherwise granted by licensor in "(b)" above shall be limited to three (3) years beginning on the date BM's distributor or dealer delivers the background music tape to the user or purchaser.

(d) BM agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and to require each such purchaser to agree thereto in writing. BM further agrees to give written notice to the purchaser of the background music tapes of the expiration of their rights under this agreement and the date thereof. Such notice shall specifically state that it is a violation of the United States Copyright Law to perform the background music tapes publicly after the expiration date. Upon the request of BM, the user shall

E1427

hereinafter referred to as "Licensor" and "Licensee",
all were residing in Los Angeles in 1941, and
the purchase of their services, the copies of the
background music tape containing compositions listed
herein of all notices of termination sent pursuant to this paragraph
Licensor may copy this list or make microfilm copies of it at
Licensor's expense at his office but only to the extent necessary
for Licensor to verify his statements and in connection with his
work and not for delivery to any third party.

7. Licensee agrees to pay royalties to Licensor for the right
granted pursuant to Paragraph 6 above at the rate of ~~one cent~~ ^{TWO CENTS}
for each part of an instrument or background music tape manu-
factured and sold hereunder, multiplied by the number of compositions
listed on Schedule "A" annexed hereto which are embodied on each such
part of instrument, ~~and the rate of one cent for each~~
^{2¢ 24 R14}

7. A. In addition to any other royalties agreed to be
paid hereunder by 3M to Licensor, 3M agrees to pay an artist's
royalty to Licensor at the rate of One Cent (1¢) for each part of
an instrument or background music tape manufactured and sold
hereunder, multiplied by the number of compositions listed on
Schedule "A" and/or Schedule "B" annexed hereto which are embodied
on each such part of instrument.

7. B. Licensee agrees to pay royalties to Licensor for the right
granted pursuant to Paragraph 6 above at the rate of one cent
for each part of an instrument or background music tape manu-
factured and sold hereunder, multiplied by the number of compositions
listed on Schedule "A" and/or Schedule "B" annexed hereto which are embodied
on each such part of instrument.

9. Licensee shall maintain accurate and complete records of the sales to the royalties agreed to be paid. Licensee shall keep these and records may be inspected, audited and copied at any time during Licensee's office hours. Books and records are to be maintained during Licensee's regular business hours, by a certified public accountant, at Licensee's sole expense.

10. Licensee warrants and represents that it will notify Licensee at least five (5) years in advance of the expiration of its right to grant the within license with respect to any individual named in the composition contained on Schedule "A". Licensee shall also from time to time notify Licensee of additions to Schedule "A".

11. Licensee guarantees that the total royalty payments to Licensee during the term hereof shall be not less than Fifteen Thousand Dollars (\$15,000.00), which sum shall be paid to Licensee upon execution of this agreement as an advance. Licensee shall be entitled to receive the aforesaid minimum guaranteed royalty one of the following ways hereunder. To the extent that the royalties paid or payable to Licensee during any year of the term of this agreement exceed the minimum amount set forth above, Licensee shall receive or be entitled to the payments in succeeding years.

12. The term of this agreement shall be three (3) years, beginning upon the delivery to Licensee by the other party of the first payment of royalties. The term may not end on the first day of January, 1961. The term shall be extended until the first day of January, 1961, if either party to the agreement shall so notify the other party prior to the end of the term.

...shall be subject to the provisions of the Copyright Law of the United States, which shall be deemed to provide for a higher rate of royalty, Paragraph 5 of this agreement shall be deemed to include such higher royalty effective on the date the Copyright Law is effective in all states and territories provided a law was there. Notwithstanding the foregoing, the right granted hereunder to purchasers shall continue until the expiration of the period described in Paragraph 6.

17. Licensor shall notify Licensee on completion of each master background-music tape recording hereunder of the title of Licensee's composition used therein and of any subsequent additions or deletions.

18. This agreement is not intended and shall not be construed to obligate Licensee to use any compositions hereunder or to represent in any way or affect any prior license between the parties with respect to the compositions.

19. Licensee agrees to indemnify and hold Licensor harmless from any loss, damage, cost or expense, including reasonable attorney's fees, incurred by Licensor, because of any claim, suit, demand, action, or expense which is inconsistent with the agreement, representation and warranty expressly made by Licensor.

20. Licensee warrants that it is an owner of the master tape recording of the composition, recording and release of the master tape recording of the composition and that it is not a licensee of the master tape recording of the composition.

17. In addition to all other rights in and to the composition, in the event that the Licensor shall be notified in writing of such termination, the Licensor shall have the right to terminate this thirty (30) days after the mailing of a notice of termination to the Licensee, and upon such termination all rights herein granted to the Licensee shall terminate. The Licensee shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensee, however, the right to recover from the Licensee all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Failure by Licensee of full performance of this agreement by the Licensee in any part of the term shall constitute a waiver of the right of Licensor to require full and complete performance of this agreement hereinafter.

18. This agreement shall not be assigned by the Licensee either orally or by operation of law except as part of the sale or transfer of its entire duplicating business division or some one-half of Minnesota Duplicating and Manufacturing Company, Inc. This agreement shall be binding upon the Licensee, its successors, representatives and assigns as hereinafter limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be void as to the terms hereof.

19. The Licensee shall be required to store or file the composition to be stored or filed by any copyright and to maintain the same in a safe and secure place and to deliver the same to the Licensor upon demand.

E1431

20. The above represents and warrants that the property herein by or for the parties herein granted to it will not be subject to any claim or interest, past or present, in or to the same, without limitation, all copyrights, common-law rights and other rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, A Delaware Corporation

By:

R. H. Herzog
R. H. Herzog, Vice-President

RAY MUSIC COMPANY

By:

G. G. Galt
PRESIDENT

E1432

CBS v. ASCAP

ASCAP Exhibit No. 213

Contract dated September 1, 1965, between 3M
and Ross-Jungnickel Music Inc.

E1433

AGREEMENT made this / day of , 1963, by and between ROSS JUNGNIKEL MUSIC INC. and affiliated companies listed on Schedule "B" annexed hereto (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATION PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware corporation, of 2301 Hudson Blvd, St. Paul 19, Minnesota (hereinafter referred to as "MM").

1. GRANT TO MM BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to MM the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to arrange, reproduce, record and/or use the musical compositions and arrangements listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical right".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. MM shall not be required to serve or file any notice required to be served or filed by any copyright act or other law in connection with its exercise of the mechanical rights granted hereunder.

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E1434

B. Public Performance Rights: Licensor hereby grants to BM the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by BM (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: BM agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after BM, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - 3M agrees to advise the Purchaser of

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the afore-said royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

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to commence distribution and sale of Tapes shall be not less than

Twenty-Five Thousand

Dollars (\$ 25,000.00)

shall pay such guaranteed minimum royalty to Licensor in three (3)

equal installments as follows:

On execution hereof - \$8,333.33

One year thereafter - \$8,333.33

Two years thereafter - \$8,333.34

IM shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by IM out of the royalties then to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, IM shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments IM agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that IM elects to commence distribution and sale of Tapes, and continuing for so long as IM continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, IM shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

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E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is not delivered, 3M's sole liability hereunder shall be for the installments of the guaranteed minimum royalty pursuant to Paragraph 5(C) hereof payable prior to October 1, 1966. In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

provided, however, that for a period of six (6) months after termination, BM shall have the exclusive right to distribute and sell its inventory (as of the date of termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to sub-division (A) of this Paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by BM during the term of this agreement publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after BM, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by BM: Licensor agrees that B. shall receive written notice specifying any alleged breach by BM of any provision of this agreement and that BM shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that BM shall have such additional period of time as may reasonably be required to cure such breach, on condition that BM diligently take all reasonable steps to cure such breach and/or to prevent

the recurrence of similar breaches. In the event 3M fails to comply with the foregoing condition, Licensor may terminate this agreement and may recover from 3M all sums due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of 3M to another division.

10. AUTOMATIC MODIFICATIONS - 3M agrees that in the event that

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3% agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to subdivisions (A) and (B) of Paragraph 5 hereof for the use of Compositions similar in duration and type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
 OF MINNESOTA MINING AND MANUFACTURING COMPANY

By: F. H. Herlog, Vice-President
ROSS JUNGnickel Music Inc. and affiliates

By: _____ *jpr*

Composition

Publisher

Composer

ANGEL

Gladys

ARRIVERCI ROMA (GOODBYE
TO ROME)

Reg Connolly

BACHELOR PARTY, THE

Ross Jungnickel-Colby

BARBARA

Gladys

BEAUTIFUL GIRLS OF VIENNA,
THE

Ross Jungnickel

BESIDE A SILVERY STREAM

Daniels

BIG HURT, THE

Gladys

BRING BACK THE THRILL

Alamo

~~DEAR-EST~~ BOY OF MINE

~~Ross Jungnickel~~

Added

GIGI

Alamo

GREAT DAY

Mathis

I'M BEGINNING TO SEE THE
LIGHT

Alamo

I'M YOURS

Gladys

ISTANBUL

Alamo

IT'S ONLY A PAPER MOON

Mathis

MOONLIGHT AND ROSES

Daniels

MORE THAN YOU KNOW

Mathis

NO MAN IS AN ISLAND

Ross Jungnickel

→ ONE MINT JULEP

Progressive

POINCIANA

Ross Jungnickel

POOR PEOPLE OF PARIS

Reg Connolly

Added

SCHEDULE A

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(Continued)

<u>Composition</u>	<u>Publisher</u>	<u>Composer</u>
SENTIMENTAL ME	Ross Jungnickel	
SHE'S FUNNY THAT WAY	Ross Jungnickel	
SWEET AND LOVELY	Daniels	
THERE GOES MY HEART	Silvertowne Music	
(THE) UNFORGIVEN	Ross Jungnickel-Colby	
TONIGHT YOU BELONG TO ME	Mathis	
TWEEDLE DEE	Progressive	
WAGON WHEELS	Ross Jungnickel	
WILD IS THE WIND	Ross Jungnickel	
WITHOUT A SONG	Mathis	
YOU TURNED THE TABLES ON ME	Ross Jungnickel-Gladys	

R.B.D.

SCHEDULE B

Gladys Music Co., Inc.
Reg Connelly Music Inc.
Ross Jungnickel Music Inc.
Charles N. Daniels Music, Inc.
Alamo Music Inc.
Johnny Mathis Music Inc.
Silvertonne Music Corp.
Colby Music Inc.

R. W. C.

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CBS v. ASCAP

ASCAP Exhibit No. 214

Contract dated September 7, 1966, between 3M
and St. Nicholas Music Inc.

AK 214 id

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AGREEMENT made this 7 day of Sept, 1966, by
and between ST. NICHOLAS MUSIC INC. of 1619 Broadway, New
York, New York 10019 (hereinafter jointly and
severally referred to as "Licensor") and the DUPLICATING PRODUCTS
DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware
corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter
referred to as "3M").

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the
non-exclusive right throughout the United States, its territories
and possessions, (hereinafter referred to as the "Territory") to
arrange, reproduce, record and/or use the musical compositions
and arrangements listed on Schedule A annexed hereto
(hereinafter individually and jointly referred to as the "Compo-
sitions") in whole or in part, as well as the titles thereof, upon
parts of instruments serving to produce and reproduce the composi-
tions mechanically and/or electrically, and the right to manufac-
ture, advertise, exploit, distribute and/or sell such parts of
instruments throughout the Territory. (The aforesaid rights are
hereinafter referred to as "mechanical right".) For purposes of
this agreement, "parts of instruments" shall be limited to pre-
recorded tapes intended for sale and use only for the purpose of
providing background music (hereinafter referred to as the "Tapes")
and the master recordings from which the Tapes are derived. 3M
shall not be required to serve or file any notice required to be
served or filed by any copyright act or other law in connection
with its exercise of the mechanical rights granted hereunder.

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B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

2. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - BM agrees to advise the Purchaser of

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the afore-said royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

to commence distribution and sale of Tapes shall be not less than Two Thousand Seven Hundred Dollars (\$2,700.00). 3M shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:

Upon notice of commencement of
the initial term hereof - Five Hundred Dollars (\$500.00)

One year thereafter - Nine Hundred Dollars (\$900.00)

Two years thereafter - Nine Hundred Dollars (\$900.00)

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the July 31 or January 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received

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written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than December 31, 1966. (Said three-year period is hereinafter referred to as the "initial term".) After the expiration of the initial term, the term of this agreement shall be automatically extended from year to year, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

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provided, however, that for a period of six (6) months after such termination, 3M shall have the exclusive right to continue to distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to sub-division (A) of this Paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by 3M during the term of this agreement publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and that 3M shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that 3M shall have such additional period of time as may reasonably be required to cure such breach, on condition that 3M diligently take all reasonable steps to cure such breach and/or to prevent

the recurrence of similar transactions. In the event 3M fails to comply with the foregoing conditions, Licensor may terminate this agreement and may recover from 3M all sums due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one Division of 3M to another division.

10. AUTOMATIC MODIFICATIONS - 3M agrees that in the event that

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BM agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to subdivisions (A) and (B) of Paragraph 5 hereof for the use of Compositions similar in duration and type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

By: R. H. Herzog
R. H. Herzog, Vice President
ST. NICHOLAS MUSIC INC.

By: John D. Walker

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SCHEDULE "A"

RUDOLPH THE RED NOSED REINDEER

Marks

I HEARD THE BELLS ON CHRISTMAS DAY

Marks

A HOLLY JOLLY CHRISTMAS

Marks

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CBS v. ASCAP

ASCAP Exhibit No. 215

Contract dated February 21, 1966, between 3M and
Sam Fox Publishing Co.

Agreement made this 21st day of February

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AL 215

and between SAM FOX PUBLISHING CO. INC. of 1841 Broadway,

New York, New York 10019

(hereinafter jointly and

severally referred to as "Licensor") and the DUPLICATING PRODUCTS

DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware

corporation, of 2501 Hudson Road, St. Paul 19, Minnesota

after referred to as "3M").

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DEC 1973

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to arrange, reproduce, record and/or use the musical compositions and arrangements listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical right".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or other law in connection with its exercise of the mechanical rights granted hereunder.

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B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided; however, that this exclusion shall apply to the portion or portions of such premises used for the event or entertainment for which an admission fee is charged.

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes. *

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - BM agrees to advise the Purchaser of:

* nor shall any such purchaser use a Machine or Tapes in synchronization or timed relation with visual images.

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyright, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights in the

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it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions listed on Schedules A and B which are embodied in each such Tape.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions listed on Schedule A which are embodied in each such Tape. ~~No such royalty shall be payable with respect to Compositions listed on Schedule B.~~

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D. Accounting and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (a) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension,

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provided, however, that for a period of six (6) months after such termination, 3M shall have the right to publicly distribute and sell its own copies of such compositions (Tapes and the compositions embodied on such Tapes) and to perform the Compositions in public, subject to the limitations herein contained.

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement, in accordance with sub-division (A) of this Paragraph, it is expressly intended and agreed that each purchaser of a Tape authorized by 3M during the term of this agreement, publicly or prior to the expiration of the term of this agreement, shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after 3M, its licensors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(c) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and 3M shall have thirty (30) days to cure such breach. If such breach cannot be cured within thirty (30) days, Licensor shall have such additional rights as may be required to cure such breach, and shall take all reasonable steps

the recurrence of similar breaches. In the event 3M fails to comply with the foregoing conditions, it may, at any time, terminate this agreement and may remove 3M from all sales due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding on the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as a result of the transfer or sale of its entire Duplication Products Division or the assignment of this agreement from the division of 3M to another division.

10. AUTOMATIC MODIFICATIONS - 3M agrees that if the agreement

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BM agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is payable pursuant to subdivisions (A) and (B) of said law; and if for the use of Compositions as in the nature of type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting said royalties, this agreement shall be deemed amended to illustrate said higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives, this _____ and year first above written.

Duplicating Products Division
of MINNESOTA MINING AND MANUFACTURING COMPANY

By: R.H. Herzog
R.H. Herzog, Vice-President
SAM FOX PUBLISHING CO., INC.

By: Frederick Fox

The S.M. Company certifies that the following identified titles are being used in the _____

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_____ certifies that the following identified titles may be used by the S.M. Company
subject to the terms of the basic contract.

PUBLISHER _____

TITLE	COMPOSER	SOURCE
_____	JOHN CAGNY'S	FM
_____	J.S. CANTOR	FM
_____	ERIC HENDRICKS	FM
_____	JOHN CAGNY'S	FM
_____	P. BENTLEY	FM
_____	TURNER & JONES	FM
_____	DAVID LINDSEY	FM
_____	J.S. CANTOR	FM
_____	LAUREN JOHNSON	FM
_____	GEORGE FLETCHER	FM
_____	KING DAVID	FM
_____	WIL. JONES	FM
_____	JOHN S. JONES	FM
_____	FRANK CANTOR	FM
_____	DAVID & LINDSEY	FM
_____	G. BENTLEY	FM
_____	DAVID JONES	FM
_____	T. JONES	FM
_____	WIL. JONES	FM
_____	HENRY JONES	FM
_____	RICHARD JONES	FM
_____	DAVID LINDSEY	FM
_____	GEORGE & LINDSEY	FM
_____	J.S. CANTOR	FM
_____	F. JONES	FM

FF Rec

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CBS v. ASCAP

ASCAP Exhibit No. 216

Contract dated September 1, 1965, between 3M
and Southern Music Publishing Co.

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AGREEMENT made this 1st day of September, 1965 by and between SOUTHERN MUSIC PUBLISHING CO. INC., 1619 Broadway, New York, N. Y. (hereinafter sometimes referred to as "Southern") and PEER INTERNATIONAL CORPORATION of the same address (hereinafter sometimes referred to as "Peer") (both of which are hereinafter sometimes referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of MINNESOTA MINING AND MANUFACTURING COMPANY, A Delaware Corporation of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "MM").

1. Licensor represents and warrants that it owns and/or controls the right under the United States Copyright Law to authorize the mechanical reproduction and/or use of the musical compositions listed on the catalogues attached hereto and identified as Schedule "A" upon parts of instruments (sometimes hereinafter referred to as "background music tapes") serving to produce and reproduce the said copyrighted musical compositions mechanically or electrically (hereinafter collectively and individually referred to as the "compositions"). While the use described in this paragraph is a use on pre-recorded tape only, for purposes of this agreement it shall be deemed and sometimes referred to as a mechanical reproduction.

2. Southern represents and warrants that it has the non-exclusive right to authorize the public performance

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for profit, or otherwise, of the compositions listed in
Schedule "A" under the caption "ASCAP Compositions"; Peer
warrants that Broadcast Music Inc. (BMI) controls the ^{PERFORMER} ~~PERFORMER~~
performance for profit, or otherwise, of the compositions
listed in Schedule "A" under the caption "BMI Composition";
provided, however, that if for any reason during the period
of five (5) years from the effective date hereof, ^{but in no event beyond December 31, 1970,} the afore-
said right shall no longer be controlled by BMI, Peer agrees
to license such right to BM upon the same terms and conditions
as were previously in effect in the agreement between BM
and BMI. The Licensor further represents and warrants that
it has the right to make this agreement.

PLEASE INITIAL

RH

JP

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (c) Southern further grants to 3M the non-exclusive right in the United States, its territories and possessions, to perform the compositions listed in Schedule "A" under the caption "ASCAP Compositions" for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and

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similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly). 3M will obtain a similar non-exclusive performance license from BMI with respect to the compositions listed in Schedule "A" under the caption "BMI Compositions".

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in "(a)" above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchaser of the background music tape of the expiration of their rights hereunder prior to the date thereof.

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shall specifically advise the purchaser that it is a violation of the United States Copyright Law to continue to perform the background music tapes publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay Southern royalties for the rights granted pursuant to Paragraph 6 above, at the rate of Three Cents (3¢) for part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder by Southern (compositions listed under caption "ASCAP Compositions" in Schedule "A") which are embodied on each such part of instrument. 3M agrees to pay BMI such royalties as may be provided for in the license agreement to be obtained by it from said BMI with respect to the musical compositions listed under the caption "BMI Compositions" in Schedule "A".

8. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes

manufactured and sold of each composition.

9. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained, during 3M's regular business hours, by a certified public accountant, and at Licensor's sole expense.

10. Licensor warrants and represents that it will notify 3M at least one (1) year in advance of the expiration of its rights to grant the within license with respect to any individual musical composition contained in Schedule "A".

11. 3M guarantees that the total royalty payments to Southern during the term hereof shall be not less than FIFTEEN THOUSAND (\$15,000) DOLLARS, and that the total royalty payments to Peer during the term hereof shall be not less than TWENTY-TWO THOUSAND FIVE HUNDRED (\$22,500) DOLLARS. 3M shall pay the said minimum guaranteed royalties to the Licensor respectively in three (3) equal instalments as follows:-

One-third (1/3) on the execution hereof;

One-third (1/3) on the commencement of the second year of the term; and

One-third (1/3) on the commencement of the third year of the term.

3M shall be entitled to recoup the foregoing payments made to Southern out of the royalties payable to Southern hereunder; and 3M shall be entitled to recoup the foregoing payments made to Peer out of the royalties payable to Peer hereunder. To the extent that the royalties paid or payable to Southern during any year of the term of this agreement exceed the minimum

guaranteed amounts set forth above, 3M shall receive credit therefor towards any payment or payments of such guaranteed amounts due Southern in succeeding years. To the extent that the royalties paid or payable to Peer during any year of the term of this agreement exceed the minimum guaranteed amounts set forth above, 3M shall receive credit therefor towards any payment or payments of such guaranteed amounts due Peer in succeeding years.

12. The term of this agreement shall be three (3) years beginning upon the delivery to Licensor by 3M of notice of the commencement of the term but the term may not commence later than October 1, 1966. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term or any subsequent contract year hereof, upon all of the terms and conditions contained herein, except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective, for all master recordings produced subsequent thereto and except that the guaranteed minimum royalties payable during each extended year shall be FIVE THOUSAND (\$5,000) DOLLARS to Southern and SEVEN THOUSAND FIVE HUNDRED (\$7,500) DOLLARS to Peer. Notwithstanding the termination hereof, the rights granted hereunder to purchasers shall continue until the expiration of the period described in Paragraph 6.

13. 3M shall notify Licensor on completion of each master background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

14. This agreement is not intended and shall not be construed to obligate 3M to use any compositions hereunder or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

15. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreement, representations and warranties expressly made by Licensor. This indemnity shall be limited however to the extent of the monies paid or payable to the Licensor pursuant to this agreement.

16. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

17. 3M agrees that in the event 3M agrees to pay a higher rate of royalty to any person, firm or corporation than is payable hereunder for the use of compositions similar in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty, this agreement will be deemed amended to incorporate such higher rate, terms and/or conditions.

18. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement

forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of any performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

19. This agreement shall not be assigned, either voluntarily or by operation of law except as part of the sale or assignment of its entire Duplicating Products Division or from one division of 3M to another Mining and Manufacturing Company to another. This agreement shall be binding upon the parties thereto, their representatives and assigns, and as hereinbefore limited. Any assignment or transfer of the compositions or the copyrights therein shall be subject to the terms of this agreement.

20. 3M shall not be required to register its compositions with the Copyright Office or to be served or filed by any copyright act. Licensor has the right to waive the service or filing of any such act.

21. Licensor represents and warrants that it is the owner of all rights herein granted to it and will not constitute a violation of any right, title or interest, including, without limitation, all copyrights, common-law rights and any other rights in the works of 3M.

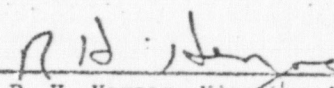
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firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures
to this contract the date first above written.

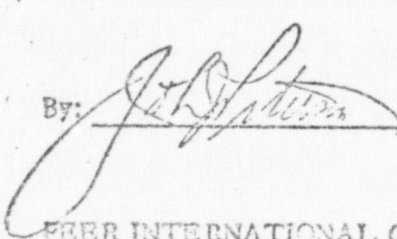
THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTUR-
ING COMPANY, A Delaware Corporation

By:

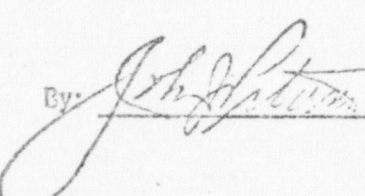

R. H. Herzog, Vice-President

SOUTHERN MUSIC PUBLISHING CO. INC.

By:


PEER INTERNATIONAL CORPORATION

By:



Dated: March 6, 1969

Duplicating Products Division
Minnesota Mining and Manufacturing
Company
3501 Hudson Road
St. Paul, Minnesota

Gentlemen:

Reference is made to the agreement between us dated September 1, 1965 pursuant to which we authorized you in connection with your background music program to extend to purchasers of your Cantata 700 machines and tapes a three year license to perform publicly for profit certain musical compositions owned or controlled by us on the premises of the purchasers as defined in the agreement and the ACKNOWLEDGMENT OF RIGHTS FORM attached thereto ("the purchasers").

1. We hereby grant you the right subject to the conditions herein to extend the license previously granted to the purchasers for additional consecutive one year periods commencing either on expiration of the three year original term (not more than three consecutive one year periods), or one year extension thereof (not more than two one year consecutive periods). Such extensions will be subject to the same restrictions as were applicable during the original three year term.

2. You agree to pay us the sum of one cent (1c) for each musical composition owned or controlled by us and contained on any tape licensed under this authorization per year of extended license to each of the purchasers to whom you grant an extension. We acknowledge that you shall have the right to arrange your own schedule of fees with the purchasers and that you may change such fees from time to time without adjustment in the amounts payable to us hereunder. You shall only be obligated to pay us on account of the purchasers who pay you for extensions. No grant will be made by you without payment.

3. We understand that you shall have the right to discontinue the licensing program undertaken by you at any time hereafter upon notice to us.

4. You shall account to us and pay us all sums due us hereunder at regular intervals but not less than annually.

5. We warrant that we now own or control and shall for the next five years continue to own or control the public performing rights of the musical compositions hereunder and that we have the right to grant this license.

5 (a) This agreement refers only to those compositions cleared through the American Society of Composers Authors and Publishers.



6. This agreement contains the entire understanding between us and shall not be modified other than by a written document signed by both parties. It shall be governed by and construed in accordance with the laws of the state of New York applicable to agreements executed and wholly performed therein.

Very truly yours,
SOUTHERN MUSIC PUBLISHING CO. INC.

BY 

Accepted and Agreed:

MINNESOTA MINING AND MANUFACTURING
COMPANY

BY 

R. H. Herzog, Vice President

The undersigned publishers, having entered into certain agreements with the Duplicating Products Division of Minnesota Mining and Manufacturing Company ("3M") with respect to 3M's Cantata 700 Background Music Program, do hereby agree as follows (notwithstanding anything to the contrary contained in said agreements):

1. That 3M may manufacture and sell libraries in the Cantata 700 Background Music Program containing musical compositions owned or controlled by the undersigned publishers for a period of three (3) years from August 1, 1970 and thereafter for additional consecutive periods of one (1) year each until such time as either 3M or the undersigned publishers give written notice to the other, not later than ninety (90) days prior to the expiration of any such one-year period, of its desire to terminate the aforesaid agreements at the expiration of the then current contract year.
2. That during the period described in the preceding Paragraph 1, 3M shall not be subject to any financial or minimum inclusion guarantees with respect to any of the aforesaid libraries in 3M's Cantata 700 Background Music Program and that 3M shall commence payment to the undersigned publishers, pursuant to the terms and conditions of the aforesaid agreements, on a current basis commencing with sales made during the accounting period ending January 31, 1972, notwithstanding any unrecouped advances against royalties payable to the undersigned publishers on 3M's books at that time.
3. That purchasers of libraries contained in 3M's Cantata 700 Background Music Program during the period described in Paragraph 1 above shall have the right publicly to perform compositions owned or controlled by the undersigned publishers, which are contained in such libraries for a period of three (3) years from the date of purchase (where such right is included in the aforesaid agreements).

The foregoing shall not be deemed to diminish any more extensive right granted by the undersigned pursuant to said agreements. Except as aforesaid, all terms and conditions of said agreements shall continue in full force and effect.

Dated: January 17, 1972

PEER INTERNATIONAL CORP.
SOUTHERN MUSIC PUBLISHING CO. INC.

By: 

CONFIRMATION OF RIGHTS

The undersigned publisher(s), having entered into certain agreement(s) with the Duplicating Products Division of Minnesota Mining and Manufacturing Company ("3M") with respect to 3M's Cantata 700 Background Music Program, does hereby agree as follows (notwithstanding anything to the contrary contained in said agreements):

1. That 3M may manufacture and sell libraries in the Cantata 700 Background Music Program for a period of two (2) years from August 1, 1968.

2. That during such two year period 3M shall not be subject to any financial or minimum inclusion guarantees with respect to such libraries.

3. That purchasers of such libraries during such two year period shall have the right publicly to perform the compositions owned or controlled by the undersigned which are contained in such libraries for a period of three (3) years from the date of purchase (where such right is included in said agreements).

The foregoing shall not be deemed to diminish any more extensive right granted by the undersigned pursuant to said agreements. Except as aforesaid, all terms and conditions of said agreements shall continue in full force and effect.

Dated:

PEER INTERNATIONAL CORP.
SOUTHERN MUSIC PUBLISHING CO.

By: 

E1486

CBS v. ASCAP

ASCAP Exhibit No. 217

Contract dated January 25, 1965, between 3M
and Shapiro, Bernstein & Co., Inc.

E1487

AGREEMENT made this 25 day of January, 1965, by
and between SHAPIRO, BERNSTEIN & CO., INC., SKIDMORE MUSIC CO. INC.,
MOOD MUSIC, INC., COLUMBIA PICTURES MUSIC CORPORATION, CAMELBACK
MOUNTAIN MUSIC CORP. and BARCLAY MUSIC CORPORATION, of 666 Fifth
Avenue, New York 19, New York (hereinafter jointly and severally
referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION of
MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware Corporation
of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred
to as "3M").

1. Licensor represents and warrants that it owns and/or
controls the right under the United States Copyright Law to author-
ize the mechanical reproduction and/or use of the musical composi-
tions listed on the schedule attached hereto and identified as
Schedule "A" upon parts of instruments (sometimes hereinafter re-
ferred to as "background music tapes") serving to produce and repro-
duce the said copyrighted musical compositions mechanically or elec-
trically (hereinafter collectively and individually referred to as
the "compositions"). While the use described in this paragraph is
a use on pre-recorded tape only, for purposes of this agreement it
shall be deemed and sometimes referred to as a mechanical reproduc-
tion.

2. Licensor further represents and warrants that it has
the non-exclusive right to authorize the public performance of the
compositions for profit or otherwise and that it has the right to
make this agreement.

PLB Ex 50 Q

8/4/72 RF

3. Licensor further represents and warrants that it will continue to own or control the rights described in Paragraphs 1 and 2 above for at least five (5) years after the effective date hereof.

4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute, and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes, throughout the United States for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to continue to perform the background music tapes publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its offices in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained, during 3M's regular business hours, by a certified public accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees that during the term hereof it will use a minimum of One Hundred (100) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. In the event 3M does not include the above minimum subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of ten (10) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9 above.

E1492

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensor hereunder shall be no less than Thirty Thousand Dollars (\$30,000.00). To the extent that the royalties earned by and advanced to Licensor hereunder shall be less than the said guaranteed amount, 3M shall make payment to Licensor upon the delivery of the second royalty statement rendered during each contract year hereunder.

13. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensor of Fifteen Thousand Dollars (\$15,000.00) as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. 3M shall be required, if within three (3) years after the date hereof it goes into the background music business as contemplated by this agreement, to give notice to Licensor of the commencement of the term hereof, provided, however, that 3M shall not be required to give such notice if a reasonably satisfactory library cannot be assembled as a result of 3M's entering into similar agreements with other music publishers.

This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term or any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. 3M agrees that in the event 3M agrees to pay a higher rate of royalty, or a higher guarantee in proportion to the rate and to the minimum number of compositions, to any person, firm or corporation than is payable hereunder for the use of compositions similar in duration and type to those licensed hereunder, and/or gives to any such person, firm or corporation more favorable other terms and/or conditions affecting rate of royalty or guarantee, this agreement will be deemed amended to incorporate such higher rate, guarantee, terms and/or conditions.

19. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, of a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full and complete performance of this agreement thereafter.

20. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or

transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

21. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law provided that Licensor has the right to waive the serving or filing of such notice.

22. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyrights, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signatures to this contract the date first above written.

SHAPIRO, BERNSTEIN & CO., INC.

By: Richard M. Tollett

THE DUPLICATING PRODUCTS DIVISION
MINNESOTA MINING AND MANUFACTURING
COMPANY, a Delaware Corporation

By: R. D. Hing

SKIDMORE MUSIC CO. INC.

By: Richard M. Tollett

MOOD MUSIC, INC.

By: Richard M. Tollett

BARCLAY MUSIC CORPORATION

By: Richard M. Tollett

COLUMBIA PICTURES MUSIC CORPORATION

By: Richard M. Tollett

CAMELBACK MOUNTAIN MUSIC CORP.

R. D. Hing

E1496

CBS v. ASCAP

ASCAP Exhibit No. 219

Contract dated October 1, 1965, between 3M
and Laurel Music Corp.

AK 219 4

E1497

AGREEMENT made this 1 day of October, 1965, by and between LAUREL MUSIC CORP. and VALANDO MUSIC CORP. both of 22 West 48th Street, New York, N.Y. (hereinafter jointly and severally referred to as "Licensor") and the DUPLICATING PRODUCTS DIVISION OF MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. GRANT TO 3M BY LICENSOR

A. Mechanical Rights: Licensor hereby grants to 3M the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to arrange, reproduce, record and/or use the musical compositions and arrangements listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical right".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or other law in connection with its exercise of the mechanical rights granted hereunder.

B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

- (i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or
- (ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which the event or entertainment for which an admission fee

is charged is intended to be observed or heard and shall not be deemed to exclude any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

E. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - 3M agrees to advise the Purchaser of

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date.

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3 offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

it will continue to do so for at least three (3) years after delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes.

E1501

C. As to Public Performance Rights: Licensor warrants and represents that it owns and/or controls the public performance rights non-exclusively and that it will continue to do so for at least three (3) years after 3M delivers or causes to be delivered a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of mechanical rights, 3M agrees to pay to Licensor a royalty equal to Two Cents (2¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape. If the compulsory licensing provision of the United States Copyright Law is amended to provide a higher statutory royalty for mechanical rights than is presently contained therein, the aforesaid royalty shall be increased to equal such higher royalty for all Tapes derived from master recordings which are produced subsequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the grant of public performance rights, 3M agrees to pay to Licensor a royalty equal to Three Cents (3¢) for each Tape manufactured and sold by 3M, multiplied by the number of Compositions embodied in each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable to Licensor pursuant to subdivisions (A) and (B) of this Paragraph during the first three years following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects

to commence distribution and sale of Tapes shall be not less than Twenty-Six Thousand and Forty Dollars (\$ 26,040.00). 3M shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:

On execution hereof - Eight Thousand Six Hundred Eighty (\$8,680)
 One year thereafter - Eight Thousand Six Hundred Eighty (\$8,680)
 Two years thereafter - Eight Thousand Six Hundred Eighty (\$8,680)

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

E. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is not delivered, 3M's sole liability hereunder shall be for the installments of the guaranteed minimum royalty pursuant to Paragraph 5(C) hereof payable prior to October 1, 1966. In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof, (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

provided, however, that for a period of six (6) months after such termination, 3M shall have the exclusive right to continue to distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to sub-division (A) of this Paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by 3M during the term of this agreement publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by 3M: Licensor agrees that 3M shall receive written notice specifying any alleged breach by 3M of any provision of this agreement and that 3M shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that 3M shall have such additional period of time as may reasonably be required to cure such breach, on condition that 3M diligently take all reasonable steps to cure such breach and/or to prevent

the recurrence of similar breaches. In the event 3M fails to comply with the foregoing condition, Licensor may terminate this agreement and may recover from 3M all sums due to Licensor from 3M prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate 3M to use any of the Compositions on the Tapes. 3M agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify 3M from time to time of any additional Compositions to be added to Schedule A.

8. INDEMNITY BY LICENSOR - Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by 3M by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to 3M or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that 3M agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of 3M to another division.

10. AUTOMATIC MODIFICATIONS - 3M agrees that in the event that

E1506

3M agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation than is provided pursuant to subdivisions (A) and (B) of Paragraph 3 heretofore, and the use of Compositions similar in duration and type to the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
OF MINNESOTA MINING AND MANUFACTURING COMPANY

By: R. H. Herzog
R. H. Herzog, Vice-President

LAUREL MUSIC CORP.
VALANDO MUSIC CORP.

By: [Signature]

L1507

CBS v. ASCAP

ASCAP Exhibit No. 222

Contract dated April 2, 1965, between 3M and
Hi-Ti Music Corp.

AX 222 id 86

E1508

AGREEMENT made this 2nd day of April, 1965
by and between HI FI MUSIC CORPORATION of 5437 Laurel Canyon
Boulevard, North Hollywood, California (hereinafter referred to as
"Licensor") and the LICENSING PROGRAMS DIVISION OF MINNESOTA
MINING AND MANUFACTURES COMPANY, A Delaware Corporation of
2501 Hodson Road, St. Paul 19, Minnesota (hereinafter referred to
as "SM").

1. Licensor represents and warrants that it owns and/or
controls the right under the United States Copyright Law to author-
ize the mechanical reproduction and/or use of the musical composi-
tions listed on the schedule attached hereto and identified as
Schedule "A" upon parts of instruments (sometimes hereinafter re-
ferred to as "background music tapes") serving to produce and repro-
duce the said copyrighted musical compositions mechanically or elec-
trically (hereinafter collectively and individually referred to as
the "compositions"). While the use described in this paragraph is
a use on pre-recorded tape only, for the purposes of this agreement
it shall be deemed and sometimes referred to as a mechanical repro-
duction.

2. Licensor further represents and warrants that it has
the non-exclusive right to authorize the public performance of the
compositions for profit or otherwise and that it has the right to
make this agreement.

3. Licensor further represents and warrants that it will
continue to own or control the rights described in Paragraphs 1 and
2 above for at least five (5) years after the effective date hereof.

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4. Licensor hereby grants to 3M, its successors and assigns, a non-exclusive license to use the compositions, in whole or in part and the titles thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically and to manufacture, produce, record, advertise, exploit, distribute and/or sell such parts of instruments, and specifically the license to use the compositions and the titles thereof in the manufacture, production, recording, advertising, exploitation, distribution, sale and/or license of pre-recorded background music tapes throughout the world for and during all periods of time sufficient to comply with the provisions of this agreement. Notwithstanding anything to the contrary contained herein, no right of public performance is granted pursuant to this Paragraph 4.

5. 3M agrees to pay royalties to Licensor for the rights licensed pursuant to Paragraph 4 above at the rate of Two Cents (2¢) for each part of instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of an instrument or background music tape manufactured and sold hereunder.

6. (a) Licensor further grants to 3M the non-exclusive right in the United States, its territories and possessions, to publicly perform the compositions for profit or otherwise and to authorize others so to do but only by means of the pre-recorded background music tape licensed hereunder through a machine manufactured by 3M and presently known as the M-700 (and similar machines designed and redesigned for sale by 3M for use in establishments which will perform musical compositions publicly).

(b) It is understood that neither 3M, its distributors nor any purchaser of the parts of instruments covered hereby shall have any right to record and/or perform the compositions in synchronization with any means of visual reproduction, nor any right to broadcast and/or televise the compositions, or to license others to do so and that this license includes no right of public performance except as background music pursuant to the terms of this agreement. No license to perform or use the compositions hereunder through central studios or wired use or in places where admission fees are charged is conveyed hereunder. The license to perform the compositions shall be restricted to the establishment of the purchaser of the background music tape and he shall have no right to convey this license to others by operation of law or otherwise.

(c) It is further agreed that with respect to each part of instrument or background music tape sold by 3M during the term hereof, the right of public performance for profit or otherwise granted by Licensor in (a) above shall be limited to three (3) years beginning on the date 3M's distributor or dealer delivers the background music tape to the user or purchaser.

(d) 3M agrees to indicate to the purchaser of each background music tape manufactured and sold hereunder the extent and/or limitations of the performance license granted hereunder and will require each such purchaser to agree thereto in writing. 3M further agrees to give written notice to the purchasers of the background music tapes of the expiration of their rights hereunder prior to the date thereof. Such notice shall specifically advise the purchaser that it is a violation of the United States Copyright Law to

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continue to perform the background music tape publicly for profit after the expiration date. Upon the request of Licensor or its duly authorized agent, at reasonable times and on reasonable notice, 3M will make available at its office in St. Paul, Minnesota, a list of the purchasers and their addresses, the dates of purchase of each background music tape containing compositions licensed hereunder and copies of all notices of termination sent pursuant to this paragraph. Licensor may copy such list or make microfilm copies thereof at Licensor's own expense at 3M's office but only to the extent necessary for Licensor to verify 3M's statements and in connection with Licensor's own records and not for delivery to any third party.

7. 3M agrees to pay royalties to Licensor for the rights granted pursuant to Paragraph 6 above at the rate of Three Cents (3¢) for each part of an instrument or background music tape manufactured and sold hereunder, multiplied by the number of such compositions licensed hereunder which are embodied on each such part of instrument.

8. 3M agrees to maintain accurate books and records pertaining to the royalties agreed to be paid Licensor hereunder, which books and records may be inspected, audited and copied by Licensor at 3M's office where such books and records are regularly maintained during 3M's regular business hours, by a Certified Public Accountant, and at Licensor's sole expense.

9. Licensor warrants and represents that it will notify 3M at least five (5) years in advance of the expiration of its rights to grant the within license with respect to any individual musical

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PLEASE INITIAL
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composition contained on Schedule "A". Licensor shall also from time to time notify 3M of additions to Schedule "A".

10. 3M agrees that during the term hereof it will use a minimum of thirty (30) of Licensor's compositions on each of its initial issue of background music tapes of approximately 700 selections and that it will not manufacture any differently programmed tapes as its basic libraries for at least one (1) year after the effective date hereof. For purposes of this agreement, a use by 3M of one of Licensor's compositions on its Christmas tape will constitute a use of a composition even though such composition may have been used by 3M on its initial issue of tapes. In the event 3M does not include the above minimum on subsequently issued and differently programmed background music tapes, Licensor shall have the right to terminate this agreement upon sixty (60) days written notice to 3M, provided, however, that conditioned upon 3M's fulfillment of its obligation to account and pay royalties hereunder and compliance with its other obligations hereunder, 3M shall continue to have the right to manufacture and sell its initial background music tapes pursuant to the terms hereof for a period of ten (10) years after the effective date hereof, except with respect to individual compositions on which notice is given to 3M pursuant to Paragraph 9.

11. 3M agrees to compute said royalties and to pay said royalties to Licensor within sixty (60) days after the expiration of each six (6) month period beginning on the effective date hereof and continuing for so long as 3M continues to include the compositions on background music tapes manufactured hereunder. Together

E1513

with each payment, a statement shall be delivered to Licensor showing in detail the titles of the compositions used and the number of parts of instruments or background music tapes manufactured and sold of each composition.

12. 3M guarantees to Licensor that during each year of the term hereof the royalties earned by Licensee hereunder shall be no less than Twelve Thousand Dollars (\$12,000.00). To the extent that the royalties earned by and advanced to Licensor hereunder shall be less than the said guaranteed amount, 3M shall make payment to Licensor upon the delivery of the second royalty statement rendered during each contract year hereunder.

13. The term of this agreement shall be one (1) year beginning upon the delivery to Licensor by 3M of notice of the commencement of the term, which notice shall be accompanied by payment to Licensor of Ten Thousand Dollars (\$10,000.00) as an advance against royalties. 3M agrees that such notice may not be given later than August 1, 1965. This agreement shall be extended from year to year in absence of written notice from either party to the other given not later than sixty (60) days prior to the end of the term of any subsequent contract year hereof upon all of the terms and conditions contained herein except that if the compulsory license provision of the Copyright Law of the United States shall be amended to provide for a higher statutory royalty, Paragraph 5 of this agreement shall be deemed amended to include such higher royalty effective on the date the amendment of the Copyright Law is effective for all master recordings produced subsequent thereto.

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14. 3M shall notify Licensor on completion of each pre-recorded background music tape programmed hereunder of the titles of Licensor's compositions used therein and of any subsequent additions or deletions.

15. This agreement is not intended and shall not be construed to obligate 3M to use any specific compositions hereunder except as described above or to supersede or in any way to affect any prior license between the parties hereto with respect to the compositions.

16. Licensor agrees to indemnify and hold 3M harmless against any loss, damage, cost or expense (including reasonable attorney's fees) incurred by 3M by reason of any claim asserted by any person, firm or concern which is inconsistent with the agreements, representations and warranties expressly made by Licensor.

17. It is agreed that 3M in exercising the rights herein granted to it, may edit, adapt, arrange and modify the compositions in any reasonable way in order to make them suitable for the background music use contemplated hereunder.

18. In addition to all other rights and remedies in law or in equity, in the event that 3M shall breach any of the terms or conditions of this agreement and shall fail to cure such breach within thirty (30) days after the sending by Licensor to 3M, by correctly addressed registered mail, or a written notice thereof, Licensor may cancel this agreement forthwith, and upon such cancellation all rights herein granted to 3M shall terminate and 3M shall

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have no further right to enjoy any of the rights herein granted with respect to any of the works of Licensor, saving to Licensor, however, the right to recover from 3M all sums which shall then be due or which may thereafter accrue to Licensor and the right to recover damages for the breach, if any, of this agreement. Waiver by Licensor of full performance of this agreement by 3M in any one or more instances shall not be deemed a waiver of the right of Licensor to require full complete performance of this agreement thereafter.

19. This agreement shall not be assigned by 3M either voluntarily or by operation of law except as part of the sale or transfer of its entire Duplicating Products Division or from one Division of Minnesota Mining and Manufacturing Company to another. This agreement shall benefit and be binding upon the parties hereto, their representatives and assigns as hereinbefore limited. Any assignment or transfer of any of the compositions or the copyrights therein shall be subject to the terms hereof.

20. 3M shall not be required to serve or file any notice required to be served or filed by any copyright act or law, provided that Licensor has the right to waive the serving or filing of such notice.

21. Licensor represents and warrants that the proper exercise by 3M of the rights herein granted to it will not constitute a violation or infringement of any right, title or interest, including, without limitation, all copyright, common-law rights and statutory rights of any other person, firm or corporation.

IN WITNESS WHEREOF, the parties have affixed their signa-

E1516

times to this contract the date first above written.

THE DUPLICATING PRODUCTS DIVISION
HENDERSON HENDERSON AND MANUFACTURING
COMPANY, A Delaware Corporation

[Handwritten signature]

HI-TE MUSIC CORPORATION

By: *[Handwritten signature]*

E1517

CBS v. ASCAP

ASCAP Exhibit No. 223

Contract dated November 5, 1965, between 3M and
Milene Music, Inc.

AGREEMENT made this 5th day of November, 1965, by and

AK 223

between MILENE MUSIC, INC.

E1518

(hereinafter jointly and

severally referred to as "Licensor") and The MINNESOTA MINING AND MANUFACTURING COMPANY, a Delaware corporation, of 2501 Hudson Road, St. Paul 19, Minnesota (hereinafter referred to as "3M").

1. GRANT OF MECHANICAL RIGHTS

A. Mechanical Rights: Licensor hereby grants to 3M the non-exclusive right throughout the United States, its territories and possessions, (hereinafter referred to as the "Territory") to arrange (provided that no arrangement shall be made which will distort or alter the basic melody of any composition), reproduce, record and/or use the musical compositions listed on Schedule A annexed hereto (hereinafter individually and jointly referred to as the "Compositions") in whole or in part, as well as the title thereof, upon parts of instruments serving to produce and reproduce the compositions mechanically and/or electrically, and the right to manufacture, advertise, exploit, distribute and/or sell such parts of instruments throughout the Territory. (The aforesaid rights are hereinafter referred to as "mechanical rights".) For purposes of this agreement, "parts of instruments" shall be limited to pre-recorded tapes intended for sale and use only for the purpose of providing background music (hereinafter referred to as the "Tapes") and the master recordings from which the Tapes are derived. 3M shall not be required to cover or file any notice required to be served or filed by any copyright act or other law.

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B. Public Performance Rights: Licensor hereby grants to 3M the non-exclusive rights throughout the Territory to perform publicly for profit and to authorize purchasers of the Tapes to perform publicly for profit the Compositions embodied on the Tapes by means of a machine presently known as the M-700 or similar machines designed and/or redesigned by 3M (hereinafter referred to as the "Machine"). (The aforesaid rights are hereinafter referred to as "public performance rights".)

2. LIMITATIONS ON MECHANICAL RIGHTS AND PUBLIC PERFORMANCE RIGHTS

A. Duration: 3M agrees not to authorize any purchaser of a Tape to perform the Compositions embodied on such Tape publicly for profit for a period in excess of three (3) years after 3M, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, subject to the further limitations herein contained.

B. Locations: The public performance of the Tapes shall be only by means of a Machine installed at the premises of each purchaser of a Tape, which premises shall be designated in writing by each purchaser. In no event shall such premises include or extend to:

(i) any premises at which the Tapes are performed as an accompaniment to dancing, skating or other physical activity, or

(ii) any premises to which an admission fee is charged, provided, however, that this exclusion shall apply only to the portion or portions of such premises from which

is charged is intended to be observed or heard and shall not be deemed to include any restaurant, store, or other portion of such premises for which no admission fee is charged, or

(iii) any premises in a shopping center or other complex of separate places of entertainment, residence, business or industry other than the individual premises designated in writing at the time of purchase by each purchaser, or

(iv) any premises at which the public performance of the Tapes is preceded, accompanied or followed by advertising or commercial announcements for which consideration of any kind is received by the purchaser.

C. Re-use: No purchaser of a Machine or Tapes shall rent or lease such Machine or Tapes to any other person, firm or corporation, nor shall any such purchaser re-record or duplicate by any means the Compositions embodied on the Tapes.

D. Transmission: The public performance of the Tapes shall only be audible within the premises designated by the purchaser of each Tape or the area immediately adjacent thereto, and there shall be no transmission by television or radio station, community antenna system, wire or pre-recorded tape leased to subscribers.

3. Private Use: Notwithstanding any of the foregoing limitations, it is expressly understood and agreed that there are no restrictions of any kind on the right of a purchaser of a Machine or a Tape to perform the Compositions embodied on such Tape privately within the home of such purchaser.

3. NOTICE TO PURCHASERS - BM agrees to advise the purchaser of

each Tape of the limitations on mechanical rights and public performance rights, and to require each such purchaser to acknowledge such limitations in writing. 3M also agrees to advise each purchaser of the expiration date of his public performance rights and of the fact that it is a violation of the United States Copyright Law to continue to perform the Compositions embodied on the Tape purchased by the purchaser publicly for profit after such expiration date. E1521

Upon the written request of Licensor and at reasonable times and intervals, 3M will make available to Licensor, at 3M's offices in St. Paul, Minnesota, the names and addresses of all purchasers of Machines and Tapes, the dates of purchase, and copies of each purchaser's acknowledgement of the limitations on mechanical rights and public performance rights. Licensor may copy such information at Licensor's expense, but only (i) for the purpose of verifying statements rendered to Licensor pursuant to Paragraph 5(D) hereof or (ii) for the purpose of gathering evidence in connection with litigation against unauthorized users of Machines and Tapes. Any information obtained by Licensor from 3M hereunder shall be used only by Licensor and only for the foregoing purposes.

4. LICENSOR'S WARRANTIES

A. General: Licensor warrants and represents that the proper exercise by 3M of the rights herein granted to 3M will not constitute a violation or infringement of any right, title or interest, including without limitation copyrights, common law rights and statutory rights, of any person, firm or corporation.

B. As to Mechanical Rights: Licensor warrants and represents that it owns and/or controls the mechanical rights and that

it will continue to do so for at least three (3) years after de-
livery to Licensor of the written notice referred to in Para-
graph 6(A) hereof that 3M elects to commence distribution and
sale of Tapes. E1522

C. As to Public Performance Rights: Licensor warrants and
represents that it owns and/or controls the public performance
rights non-exclusively and that it will continue to do so for at
least three (3) years after 3M delivers or causes to be delivered
a Tape to any purchaser thereof.

5. ROYALTIES

A. For Mechanical Rights: In consideration of the grant of
mechanical rights, 3M agrees to pay to Licensor a royalty equal
to Two Cents (2¢) for each Tape manufactured and sold by 3M,
multiplied by the number of Compositions embodied in each such
Tape. If the compulsory licensing provision of the United States
Copyright Law is amended to provide a higher statutory royalty for
mechanical rights than is presently contained therein, the afore-
said royalty shall be increased to equal such higher royalty for
all Tapes derived from master recordings which are produced sub-
sequent to the date of such amendment.

B. For Public Performance Rights: In consideration of the
grant of public performance rights, 3M agrees to pay to Licensor
a royalty equal to Three Cents (3¢) for each Tape manufactured and
sold by 3M, multiplied by the number of Compositions embodied in
each such Tape.

C. Guarantee: 3M guarantees that the total royalties payable
to Licensor pursuant to subdivisions (A) and (B) of this Paragraph
during the first three years following delivery to Licensor of the
written notice referred to in Paragraph 6(A) hereof that 3M elects

to commence distribution and sale of Tapes shall be not less than Four Hundred Dollars (\$400.00). 3M shall pay such guaranteed minimum royalty to Licensor in three (3) equal installments as follows:

On execution hereof - One Hundred Thirty-Three Dollars and Thirty-Three Cents (\$133.33)

One year thereafter - One Hundred Thirty-Three Dollars and Thirty-Three Cents (\$133.33)

Two years thereafter - One Hundred Thirty-Three Dollars and Thirty-Four Cents (\$133.34)

3M shall recoup all or any portion of the guaranteed minimum royalty hereunder which was previously paid by 3M out of the royalties shown to be due to Licensor in accountings rendered pursuant to subdivision (D) of this Paragraph. To the extent that the royalties are paid to Licensor after such recoupment, 3M shall receive credit toward subsequent installments of the guaranteed minimum royalty hereunder.

D. Accountings and Payments: 3M agrees to compute and pay the royalties referred to in subdivisions (A) and (B) of this Paragraph within sixty (60) days after the expiration of each six (6) month period beginning on the June 30 or December 31 following delivery to Licensor of the written notice referred to in Paragraph 6(A) hereof that 3M elects to commence distribution and sale of Tapes, and continuing for so long as 3M continues to manufacture and sell Tapes, embodying any or all of the Compositions. Together with each payment, a statement shall be delivered to Licensor showing in detail the number of Tapes manufactured and sold and the titles of the Compositions embodied thereon. Each such statement and payment shall be binding upon Licensor unless, within six (6) months after any given statement and payment is delivered, 3M shall have received written notice from Licensor specifying Licensor's objections thereto, in which event such statement and payment shall be binding as to all matters not specifically objected to.

B. Books and Records: 3M agrees to maintain accurate books and records pertaining to the royalties to be paid to Licensor, which books and records may be inspected by a certified public accountant at 3M's office where such books and records are regularly maintained, during 3M's regular business hours and at Licensor's sole expense.

6. TERM

A. Expiration and Sell-Off: The term of this agreement shall commence upon the execution of this agreement and shall terminate three (3) years after delivery by 3M to Licensor of written notice that 3M elects to commence distribution and sale of Tapes, which written notice shall be delivered to Licensor not later than October 1, 1966. (Said three-year period is hereinafter referred to as the "initial term".) In the event that such written notice is not delivered, 3M's sole liability hereunder shall be for the installments of the guaranteed minimum royalty pursuant to Paragraph 5(C) hereof payable prior to October 1, 1966. In the event that such written notice is duly delivered to Licensor, the term of this agreement shall be automatically extended from year to year after the expiration of the initial term, unless either party shall receive from the other party, not less than one hundred twenty (120) days prior to the expiration of the initial term or of any yearly extension thereof (as the case may be), written notice that it wishes to terminate this agreement, in which event this agreement shall terminate at the end of the initial term or the then existing yearly extension.

provided, however, that for a period of six (6) months after such termination, BM shall have the exclusive right to continue to distribute and sell its inventory (as of the date of such termination) of Tapes and to authorize purchasers thereof publicly to perform the Compositions embodied thereon (subject to the limitations herein contained).

B. Rights of Purchasers upon Expiration of Term: Notwithstanding the expiration of the term of this agreement pursuant to provision (A) of this Paragraph, it is expressly understood and agreed that each purchaser of a Tape authorized by BM during the term of this agreement publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) shall have the right publicly to perform the Compositions embodied on such Tape (subject to the limitations herein contained) for a period not in excess of three (3) years after BM, its distributors, sub-distributors or dealers deliver such Tape to such purchaser, and Licensor's warranty contained in Paragraph 4(C) hereof shall continue for the benefit of such purchaser for a concurrent period of time.

C. Termination in the Event of Breach by BM: Licensor agrees that BM shall receive written notice specifying any alleged breach by BM of any provision of this agreement and that BM shall have thirty (30) days after receipt of such notice to cure such alleged breach. In the event that such alleged breach cannot be cured within thirty (30) days, Licensor agrees that BM shall have such additional period of time as may reasonably be required to cure such breach, on condition that BM diligently take all reasonable steps to cure such breach and/or to prevent

the recurrence of similar breaches. In the event BM fails to comply with the foregoing condition, Licensor may terminate this agreement and may recover from BM all sums due to Licensor from BM prior to such termination.

7. USE OF COMPOSITIONS - This agreement is not intended and shall not be construed to obligate BM to use any of the Compositions on the Tapes. BM agrees to notify Licensor, upon the completion of the programming of each Tape, of the titles of the Compositions embodied therein, and to notify Licensor of any subsequent additions or deletions to or from the Compositions embodied therein. Licensor agrees to notify BM from time to time of any additional Compositions to be added to Schedule A.

8. INDemnITY BY LICENSOR - Licensor agrees to indemnify and hold BM harmless against any loss, damage, cost or expense (including reasonable attorneys' fees) incurred by BM by reason of any claim, action or proceeding instituted by any person, firm or corporation which is inconsistent with any grant by Licensor to BM or with any of the representations and warranties made by Licensor.

9. ASSIGNMENT - This agreement shall benefit and be binding upon the parties hereto, their successors and assigns, provided, however, that BM agrees not to assign this agreement except as part of the transfer or sale of its entire Duplicating Products Division or the assignment of this agreement from one division of BM to another division.

10. ARBITRATION PROVISIONS - BM agrees that in the event of

3M agrees to pay a higher rate of mechanical or public performance royalty to any person, firm or corporation that is party pursuant to subdivisions (A) and (B) of Paragraph 5 hereof for the use of compositions similar in duration and type as the Compositions, and/or gives to any person, firm or corporation more favorable terms or conditions affecting such royalties, this agreement shall be deemed amended to incorporate such higher rate and/or more favorable terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives the day and year first above written.

DUPLICATING PRODUCTS DIVISION
of MINNESOTA MINING AND MANUFACTURING COMPANY

By: R. H. Herzog

R. H. Herzog, Vice-President

MILENE MUSIC INC.

By: John R. Brown

E1528

SCHEDULE A

I HURRIED BACK

HOW MANY PEOPLE ARE THERE IN PERIA?

E1529

CBS v. ASCAP

ASCAP Exhibit No. 290

Agreement dated as of 7/1/67 between CLGA and
Producers.

AX 290

E1530

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1967

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PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1967

THIS AGREEMENT, executed as of this 1st day of July, 1967, by and between COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC., an incorporated association of composers and lyricists, hereinafter referred to as the "Guild," and the following companies, separately and respectively, each hereinafter referred to as "Producer" and collectively referred to as "Producers":

Admiral Pictures, Inc.; The Alpha Corporation; American International Productions, a California Corporation; Ashland Productions; Aubrey Schenck Enterprises, Inc.; Banner Productions, Inc.; Bing Crosby Productions, Inc.; Brien Productions, Inc.; Bristol Pictures, Inc.; Charleston Enterprises Corporation; Cherokee Productions; Chrislaw Productions, Inc.; Columbia Pictures Corporation; Four Star Television; Frank Ross Productions; Geoffrey Productions, Inc.; Gibraltar Productions, Inc.; Harold Hecht Company (Los Angeles); Herbert Leonard Enterprises, Inc.; Jack Chertok Television, Inc.; The Kappa Corporation; Lawrence Turman, Inc.; Leonard Film, Inc.; Leonard Freeman Productions; Margate Pictures, Inc.; Mayberry Enterprises; Metro-Goldwyn-Mayer Inc.; The Mirisch Corporation of Delaware; Mirisch T.V., Inc.; Motion Pictures International, Inc.; Norlan Productions, Inc.; Oakmont Productions, Inc.; Paramount Pictures Corporation; Rainbow Productions, Inc.; Rhodes Pictures, Inc.; Robert B. Radnitz Productions, Ltd.; Tandem Productions, Inc.; The Stanley Kramer Corporation; Theme Pictures, Inc.; Twentieth Century-Fox Film Corporation; Universal City Studios, Inc.; The Walden Film Company; Walt Disney Productions; Warner Bros.-Seven Arts, Inc.

W I T N E S S E T H :

Article 1 Definitions

The following terms or words used herein shall have the respective meanings indicated below:

(a) A "composer" is a person who is employed by the Producer for the purpose of composing music and/or lyrics for use in the production of motion picture photoplays.

(b) "Composing" is the act, process or art of creating music or lyrics or both.

(c) "Underscoring" is music composed or used to accompany dramatic action or visual images in motion pictures, but having no significance to the actors and of which the actor is not, as part of the story or plot, aware.

(d) "Song" is (i) the music and lyric of any separate musical composition of which the actors in the motion picture are aware as part of the plot or story, or (ii) the music and lyric of a separate musical composition intended to be heard by the audience.

(e) A "member of the Guild in good standing" shall be a member of the Guild who has tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

(f) "Motion pictures" means and includes, whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras or devices, or any other combination of the foregoing, or by any other methods or devices now used or which may hereafter be adopted.

(g) The term "theatrical motion pictures" (hereinafter also referred to as "motion pictures" or "pictures") means motion pictures initially released in theatrical exhibition.

(b) The term "television motion pictures" (herein also referred to as "television films") as used herein means and includes motion pictures initially released to free television.

Article 2 Effective Date

E1532

The effective date of this agreement is July 1, 1967. The terms and conditions of this agreement shall not apply to individual employment contracts with composers in effect on June 30, 1967, during the term of such contracts, including option extensions thereof. Except, however, that the new wage scales contained in Article 20 shall be effective commencing as of January 1, 1967.

Article 3 Term of Agreement

The term of this agreement shall commence on July 1, 1967 and shall continue for a period of two (2) years to and including June 30, 1969. The provisions of this agreement shall continue in effect during negotiations for extension or modification of this agreement, which shall commence sixty (60) days after written notice by either party but not prior to May 1, 1969, and the new agreement shall be effective upon and as of a date to be agreed upon during the negotiations.

Article 4 Recognition

(a) This agreement shall apply only to services rendered under employment with Producer. It shall not apply to material purchased or otherwise licensed, nor to independent contractors, or supervisory employees, or to other employees whose participation in writing lyrics or music may be incidental to their bona fide employment in other capacities, provided, however, that if such last mentioned employee, with the knowledge of Producer, on two or more occasions, composes the entire lyrics or entire music of a song hereunder, such employee shall be deemed to be a composer subject to the terms of this agreement, with respect to such services, commencing with the second such occasion.

When a person is under the direction and control of the Producer as to the selection of and the manner and means by which the music for the motion picture is to be composed, he shall not be deemed to be an independent contractor. The conducting of an orchestra, as such, shall not thereby necessarily constitute such person a supervisory employee, for the purpose of this agreement.

It is the policy of the Producer not to utilize the independent contractor form of contract in a manner which would undercut the minimum requirements of the basic agreement. Producer shall send the Guild written notice of each independent contract agreement it makes.

(b) The Producer shall deliver to the Guild once each week a list of the names of composers in Producer's employ at any time during the preceding week, provided that failure on the part of the Producer to furnish any list shall not constitute a default by the Producer or a breach of this agreement, unless the Producer fails to deliver such list within seven (7) days after receiving from the Guild a written request so to do. Inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer, or a breach of this agreement.

(c) The Producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement.

Article 5 Guild Shop

(a) During the term of this agreement, each composer employed by the Producer shall be or become a member of the Guild in good standing on or after the 30th day following the beginning of such employment, or the effective date of this article, whichever is later.

For the purpose of this paragraph (a) of this Article 2, the date of the beginning of employment shall be the date of the first employment of such a composer with any member company of the Association of Motion Picture and Television Producers, Inc., who is a signatory to a collective bargaining agreement with the Guild.

The foregoing interpretation of the term "first employment" has been approved in principle by an advisory opinion of the General Counsel of the National Labor Relations Board. If such General Counsel or the local Regional Director of the Board, or the Board or a court of competent jurisdiction shall change such opinion or ruling, then the new ruling or opinion shall prevail until the same is reversed by a court of competent jurisdiction.

(b) The provisions of paragraph (a) of this article shall not apply:

(1) To a composer who is not a member of the Guild at the time of his first employment, and who does not become a member in good standing within the 30 days, as above provided, for the period necessary to permit him to complete the performance of his services in connection with his then current assignment.

(2) To a composer whom the Producer employs as a condition of the sale or license of material.

(3) To a composer employed by reason of special skill or knowledge.

(4) To a composer who or before the effective date of this article entered into an agreement with Producer and who was not on such date a member of the Guild in good standing, for the full term of such employment agreement including options, renewal, perfect and extensions exercisable by the Producer.

However, the composers employed by the Producer within exceptions (2) or (3) above, shall not exceed 10% of the total number of composers in the employ of the Producer. For the purpose of such computation, if the Producer has in his employ at any time less than ten (10) composers then one of such composers so employed may fall within one of the exceptions mentioned in subparagraphs (2) or (3) above. Promptly following the employment of any composers claimed by the Producer to be within exceptions (2) or (3) above, the Producer will notify the Guild in writing of the name of the composer employed, the date of the employment agreement and the fact that the Producer claims that such composer is an exception hereunder.

For the purpose of such computation, a composer who is employed under an exclusive contract by a Producer shall be regarded as being employed by the Producer at all times during the term of such contract, including periods during which the composer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the composer or otherwise. The composer shall be regarded as continuing in the employ of the Producer by which he is employed regardless of the fact that his services may be loaned to another Producer.

(c) Promptly after request by any person designated by the Producer, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other persons. The Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to dues that do not uniformly apply to all members of the Guild. It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a member of the Guild from becoming a member of the Guild, but on the contrary (and subject to the provisions hereof relating to universal dues to members suspended or expelled) will make available the privileges of membership to any and all composers employed by the Producer. The Guild will maintain

or readmit to membership any composer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the composer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Producer may employ or continue to employ such composer. Instead of readmitting or reinstating such composer, the Guild may at its option grant to the Producer a waiver as to such composer, in which event, for the purpose of determining the Producer's compliance with the provisions of this Article 5, such composer shall not be considered as being employed by the Producer.

(d) If during any time that a composer is employed by the Producer under a contract of employment such composer is or becomes a member of the Guild in good standing and if such composer shall subsequently and before his employment under such contract terminates cease to be a member of the Guild in good standing, then:

(1) If such composer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member of the Guild in good standing throughout the composer's employment under said contract of employment as the same may be extended or renewed.

(2) If the composer has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice that he has ceased to be a member in good standing for failure to pay dues from the Guild to both such composer and the Producer, and if, prior to the expiration of said fifteen (15) days period payment of said dues shall be made by the composer or the Producer, then for the purposes of this agreement, such composer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Producer to do so the Producer may require as a condition to employment that any composer execute such written consent or consents as may be necessary so that, if the Producer elects, it may pay to the Guild any dues of any composer and the Producer shall have the right insofar as its obligations to the Guild and to any composer under the terms and provisions of this agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the composer; provided, however, that if either such payment or deduction is or shall become contrary to law or any statute or is declared by any court of competent jurisdiction in the State of California or by any Federal court or the National Labor Relations Board or its General Counsel or by any other Board or individual having jurisdiction over the matter to be in violation of any applicable law or statute, and if by reason thereof Producer fails to deduct and pay to the Guild such dues as aforesaid and shall notify the Guild thereof in writing within the fifteen (15) day period after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) day period, for the purposes of this agreement such composer shall nevertheless be deemed to remain a member of the Guild in good standing throughout the term of the composer's employment as the same may be extended or renewed.

(3) Producer may require that if a composer shall fail or refuse to become or remain a member of the Guild in good standing as above provided, its employment agreement with such composer shall terminate.

(4) If the Producer is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any composer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Producer under the provisions of subparagraph (2) of this paragraph, the Guild agrees to repay to the Producer the amount of such dues so refunded. The Guild will cooperate with the Producer in obtaining the necessary authorizations from composers for the payment and deduction of dues in the manner provided in subparagraph (2) above.

(e) The Guild will facilitate employment of its members by the Producer and will at all reasonable times promptly furnish to the Producer in writing information concerning the status of any of its members, and the Producer shall be entitled to rely upon such information so furnished by the Guild. Promptly after the execution hereof the Producer will furnish to the Guild a list of the composers then employed by it.

(f) The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild, and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 5 and of any other applicable provisions of this agreement.

(g) It is understood that the provisions of this Article 5 shall never under any circumstances be so construed during the term of this agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Producer of its right to employ or continue the employment of a composer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in paragraph (a) of this Article 5 if the Producer has reasonable grounds for believing that such a membership was not available to such composer on the same terms and conditions generally applicable to other like members of the Guild, or if the Producer has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable initiation fee and/or periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

Article 6 Credits for Screen Composition

(a) Screen Credit for composition subject to this agreement is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, and only to those who actually composed such music and/or lyrics so used, as follows:

(1) Underscoring

Each composer who is so employed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, shall be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total underscoring used in the motion picture is by one composer,

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he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on Producer to make such a determination. In any event, credit for any such re-used music need be given by Producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

The form of underscoring screen credit shall be:

Where the composer composed all of the music, or where the composer composed all of the music except that for which credit is specifically given to others, the form of underscoring screen credit shall be "Music by" or "Music Score by" or "Music Composed by" or "Music Score Composed by" or words of similar nature. Where the composer has composed a theme for a television film without lyrics, the screen credit shall be "Theme by". In all other cases where the composer composed less than all of the music and credit is not given to others, the form of credit shall be "Music Scored by" or such other credit as may be agreed upon between the composer and Producer.

The form of screen credit for songs shall be:

"New Songs by", or "Song by", or "Songs by"; or "Original Songs by"; or "Music & Lyrics by", or "Words and Music by"; or "Words by" and "Music by"; or "Lyrics by and Music by", "Theme by" (for television films), or words of a similar nature, and in addition such other credits as may be agreed upon by the composer and Producer.

(3) The Producer shall give to the Guild and composers of the music and/or lyrics (which is subject to credits) used in the final motion picture, notice of credits intended to be used. If no protest, that an appropriate composer has been denied the required credit, is received from them by Producer within 48 hours, excluding Saturdays, Sundays and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to Producer the lack of such required credit, then the question of whether the appropriate credit has been given to the composers concerned shall be resolved by the composers involved and the Guild, within 96 hours, excluding Saturdays, Sundays and holidays, after such protest is made. In the event of such protest, the Producer will allow the Guild and the individual composers involved reasonable access to such scores in order to aid in the final determination of credits. In the case of underscoring, the question to be determined shall be whether each of the composers concerned composed more than such required one-third (1/3) of the underscoring. Such a determination of the quantity of such composers' contribution shall be final as to the parties involved. The authority of the Guild and such composers shall be limited to this sole issue. If no such determination is made by the Guild and the composers within such 96 hours, the credits shall be final by the Producer shall be final. When such credits be

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become final, there shall be no appeal of any kind from them. The above procedure and conditions shall be the exclusive remedy for determining any dispute arising in connection with credits hereunder.

(b) The Producer shall not be limited as to the size or placement of the credit.

(c) With respect to material purchased or otherwise licensed, Producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(d) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of Producer to make a statement as to whether he is or ever was a member of the Communist Party, or if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the Producer shall be relieved of its obligations to the Guild under this Article 6, and shall also be relieved of any obligations to accord credit to the composer under his employment agreement.

The Producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the Producer (1) such act or failure to act by such composer had occurred and (2) such occurrence was known to the Producer.

Article 7 Cue Sheets

Producer shall prepare for each motion picture a music cue sheet designating the composer of each cue and every part thereof indicating the nature and duration of its use in such motion picture. The cue sheet may also indicate any other information desired by Producer. Producer shall furnish one copy of the cue sheet to the

the Guild within 10 days after receipt by the Guild, the composer and the Guild shall be deemed to have waived any breach of this article; but if a protest is so made the Producer shall correct the cue sheet if Producer agrees it is erroneous or shall refer the protest to the Conciliation Committee for determination, but such protest shall not be subject to arbitration. An inadvertent failure by the Producer under any provisions of this article shall not be considered a breach of this agreement.

Composer will cooperate with producer at producer's request in the preparation of music cue sheets.

Article 8 Force Majeure

Suspension of payment of salary permitted by the so-called "force majeure" clause of employment agreements with composers shall be limited with respect to each continuous cause of suspension, as follows:

(a) Composers receiving the minimum compensation, may be suspended for 6 weeks without salary.

(b) Composers receiving above the minimum, but less than \$1,000 per week may be suspended for 8 weeks without salary.

(c) As to composers receiving \$1,000 per week or more, the matter of suspension of services and reduction of compensation shall be subject to individual negotiations between the Producer and the composer.

Article 9 Delivery of Contracts

Producer agrees that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract setting forth the terms of employment subject to this agreement. Within two weeks after such written employment contract has been fully signed, a copy thereof shall be delivered to the composer and a copy to the Guild, and if both of such copies are not executed by the Producer, the copy not so executed shall be accurately conformed by an officer or employee of the Producer, who shall place upon any such conformed copy his signature or initials in form sufficient to identify such officer or employee.

Article 10 Individual Contracts

This agreement applies to and is incorporated into the provisions of each individual contract between the employer and a composer with respect to services subject to this agreement, and such individual contract shall contain a statement to such effect.

Article 11 Copies of Independent Contractor Agreements

When a dispute arises hereunder between the Producer and the Guild concerning any independent contractor agreement, the Producer, upon the Guild's request, will make available to the Guild, a copy of such agreement, for the purpose of determining its status.

Article 12 Speculative Composition

The Producer and the Guild agree that there shall be no speculative composition, nor shall either party condone it as a practice.

The Producer and the Guild recognize that there is possibly an area wherein the proper and constructive exchange of ideas and criticism between a composer and a Producer may be claimed by the Guild to be speculative composition. Whenever the Guild claims that speculative composition has occurred, the case will be referred to conciliation and arbitration and the Producer's intent as determined by the facts shall be an important factor in the consideration.

The Producer will not agree with any composer that the composer shall write on speculation or that payment shall be contingent upon the acceptance or approval of the Producer, except that this does not limit the Producer's right to demand original composition or prevent the Producer from discussing with any composer any ideas suggested by such composer, or discussing with any composer any ideas or any material suggested by the Producer in order to determine the composer's thoughts and reactions with respect to any such idea or other material for the treatment or development thereof. Without in any way limiting the free exchange of ideas and constructive suggestions in connection with the submission of material by a composer to the Producer, and without limiting the composer's right to revise the material as a result of such exchange of ideas, the Producer and the composer will not, in the absence of a contractual relationship, engage in revising such material under continuous direction and supervision by the Producer.

It is understood that if a Producer enters into an agreement with any person who undertakes to compose material on an Independent Contract or similar basis and the Producer pays such person a separate consideration and receives therefor an option or right of first refusal to acquire the Motion Picture or other rights in such material when completed, neither such agreement, nor the consummation thereof by the acquisition of such rights shall constitute a violation of the provisions of this Article 12.

Article 13 Rights Arising From Composition

(a) As used in this Article 13, the following terms shall have the following meanings:

"Composition" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the Composer in the course of his employment by the Producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the compositions involved equally between the composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The Producer, as employer for hire of the composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including all renewals and extensions thereof in the United States, without limiting the generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the Producer in and to the compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others to do so (by any and all present and future others and their public performance, whether or not now known or contemplated) the composition, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the right to make, at his pleasure, a record.

(c) In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, Producer agrees that in the event the composer is, on the date of his employment by Producer, a member or licensee of a Society, Producer will, and it does hereby, transfer and assign the world-wide performing rights (as hereinafter defined) in and to the compositions to the composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensee of the same Society, or of an affiliate of the same Society, as the composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society, or any of its affiliated bodies to collect performance fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the Producer may authorize the performance of the compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the composer, or to the Society, or to the publisher or anyone else.

(d) The Producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the compositions:

(i) for the purpose of reproducing the same in synchronism or timed relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in paragraph (c) hereof with respect to which Producer reserves the non-exclusive right to perform the compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the composer, or any successor in interest of the composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in any means or method now or hereafter known or the motion pictures or any portion thereof or any trailer thereof with the compositions included therein, nor shall the Producer or the publisher be liable to the composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payment that the Society may or may not make to the composer.

(5) That the compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the Producer nor the distributor nor the publisher shall, under any circumstances, be liable to the composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the Producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the compositions.

(8) That if, after the transfer and assignment referred to in paragraph (c) hereof, the composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society, that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the composer remains a member of said Society; and that if, after said transfer and assignment, both the composer and the Publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the compositions involved shall revert to the Producer.

Notwithstanding the transfer and assignment referred to in paragraph (c) hereof, it is agreed that the Publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the Producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any composition is used or to be used, the Producer or the Publisher shall always have the right to impose restrictions upon the performance of such composition apart from such motion picture.

Article 14 No Strike Clause

The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of motion picture production against the Producer.

The kind of strike referred to hereinafter in this paragraph is a strike called, either (a) pursuant to the written vote therefor of 66% of the votes of active members of the Guild voting on the question at a meeting (called on at least ten (10) days advance written notice of the taking of a strike vote) or, in a mail vote, or (b) with the written assent of 66% of the active members of the Guild without a meeting or mail vote.

If, after the expiration or other termination of the term of this contract, the Guild shall call a strike against any producer, then each respective then current employment contract of composer members of the Guild (hereinafter for convenience referred to as "members") with such Producer shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Producer, perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows.

(a) That if the composer has been assigned to the composition of the music or lyric for a motion picture at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Producer, report to the Producer and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

(b) That he will immediately, after the termination of such strike and upon the request of the Producer, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

(c) That he will, in lieu of (b), after the termination of such strike, at the option of the Producer, and upon its demand, execute an agreement in writing with the Producer extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in (a), as provided in (a) (except by reason of his death, physical disability or default by the Producer), then the waiver of liability by the Producer heretofore given shall be null and void.

The member further agrees that the statute of limitations as a defense to any action by the Producer against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike and the period of the strike shall not be considered a period of laches. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Producer is ineffective thereupon, and the statute of limitations as to the Producer's rights is waived by the member automatically.

The automatic suspension provisions of this paragraph shall not affect the Producer's right to sue any individual composer for breach of contract arising during the period of such strike, unless such composer shall have complied with his obligations under the provisions of this paragraph. Nothing herein contained shall be construed to deprive the Producer of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

The provisions of this paragraph shall be deemed included in all employment contracts between composers and Producer which are now in effect and all such employment contracts which shall be entered into during the effective term of this collective bargaining agreement.

The Guild agrees that it will take such affirmative action as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this paragraph.

Notwithstanding the expiration or other termination of the term of this collective bargaining agreement, by termination or otherwise, the provisions of this paragraph shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Producer and Guild.

The Guild is a corporation. Neither the Guild nor any officer, agent, director or member of the Guild shall be liable for any strike, slowdown or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws. However, any officer, agent, director or member who affirmatively participates in, procures or induces the strike, slowdown or work stoppage, contrary to the terms of this agreement, shall not be immunized from liability by reason of the provisions of this article. Provided further that the foregoing exemption of the first sentence above shall not apply unless the Guild upon request from the Producer affected thereby shall proclaim promptly and publicly that such strike, slowdown, or work stoppage, is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Producer affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

Producer agrees it will not call or engage in any lockout of members, during the term of this agreement.

Article 15 Location Expenses

If a composer is required by the Producer to perform services on any location sufficiently far away from the Producer's studio so that overnight accommodations are reasonably necessary, the Producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the Producer may in any contract of employment between the Producer and a composer designate a reasonable daily maximum liability on the part of the Producer for such board and lodging of the composer.

In addition, Producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

Article 16 Flight Insurance

Producer will provide a minimum coverage of \$20,000 flight insurance for each composer who travels by airplane, at the direction of the Producer, during his employment. Composer shall be permitted to fill out a form specifying a beneficiary. Such form shall be filed with the designated representative of the Producer.

Article 17 Conciliation Committee

(a) Each Producer and the Guild will set up a Permanent Conciliation Committee consisting of six (6) members selected as follows:

- (1) The Guild will promptly designate three (3) members in good standing and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify

the Producer for which such Committee is organized of the names of the designees. The Guild may designate separate representatives for each Producer signatory, but need not do so.

(2) Each Producer will promptly designate three (3) representatives and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Guild thereof. Each Producer signatory hereto may designate its own separate representatives or it may designate those named by any other Producer or Producers signatory hereto. If Producer is a member of the Association of Motion Picture and Television Producers, Inc., such representatives may be appointed by said Association.

(3) The Producer and the Guild may, from time to time, make substitutions for any of their representatives by notice to the other.

(b) The Conciliation Committee will be maintained at all times during the term of this agreement. Promptly after the Committee has been constituted it shall select a chairman and vice-chairman whose terms of office shall be eighteen (18) months. During the first eighteen (18) months of the term hereof the chairman and vice-chairman of the Committee shall be representatives of the Guild and during the second eighteen (18) months of the term hereof the chairman and vice-chairman shall be representatives of the Producer. In the absence of the chairman, the vice-chairman shall act in his stead.

(c) All meetings of the Conciliation Committee and of the Board of Arbitration referred to in Article 18, shall be held in Los Angeles, California, provided, however, that the same shall be held in New York City, New York, if the difference or dispute in question arises out of the composer's performance in New York on a television program series regularly produced in New York and grievance procedure is commenced while such series continues to be produced in New York.

Article 18 Conciliation and Arbitration Procedure

(a) Steps:

Step One - Prior to submitting to conciliation and arbitration any matter properly a subject of conciliation and arbitration hereunder, an authorized representative of the Guild and an authorized representative of the Producer will in good faith attempt to settle and adjust the difference or dispute. If such representatives fail to settle or adjust the difference or dispute within seven (7) days after the matter was first brought to the attention of the party not making the claim, either party may take the matter to conciliation under Step Two by serving written notice thereof containing a statement of all matters to be submitted to the Conciliation Committee upon the other party and the chairman of said Committee.

Step Two - Conciliation: The chairman of the Conciliation Committee shall within forty (40) hours (excluding Saturdays, Sundays, and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas) after receipt of the written notice referred to in Step One, call a meeting of the Committee by written notice served upon each of its members with a copy of the notice served by the party demanding conciliation attached thereto.

The chairman shall call said meeting for a date no later than fifteen (15) days after the date of call. The Committee shall meet on the date called unless such date is continued by action of the chairman and one other member of the Committee who is a representative of the other appointing party and shall consider and act upon all matters properly submitted to it and shall not consider or act upon any unrelated matter. If a decision permitted hereunder is concurred in by any four (4) members of the Committee, the same shall be the decision of the Committee and shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such decision shall also be binding on the composer or composers involved. The decision of the Committee may include any appropriate award permitted hereunder including damages, subject to the limitations set forth in Article 19. If the Committee shall fail to meet and commence hearings or deliberation upon any matter submitted to it upon the date designated as above provided for such meeting or within a period of fifteen (15) days from the time of such call, whichever is the later, or if four (4) members of the Committee shall fail to concur in a decision within fifteen (15) days after first hearing unless otherwise mutually agreed upon, or if hearing is waived by both parties hereto, or in any event if such dispute is not settled by the Committee within thirty (30) days after receipt by the Chairman of the submission referred to in Step One, then either party hereto may, subject to the provisions of Articles 18 and 19 hereof, submit such matter to arbitration. Such submission shall be made by written notice, requesting such arbitration, delivered to the other party hereto, and in such event arbitration thereof shall be had in the manner and to the extent provided by Articles 18 and 19 hereinafter set forth.

Step Three - Arbitration

(1) The party seeking arbitration shall set forth in its notice the particulars of its claim and advise the other party of the identity of its arbitrator selected by it. Within seven (7) days thereafter the other party shall designate its own arbitrator. The two (2) arbitrators so selected shall mutually agree upon a third arbitrator and failing to do so within seven (7) days after designation of the second arbitrator, the third arbitrator shall thereupon be chosen by lot from the authorized list of arbitrators provided for herein. If the party upon which the demand for arbitration is served fails to select its arbitrator within the time limit provided herein, the other party may cause an arbitrator to be appointed for such party in the manner provided by the Code of Civil Procedure of the State of California and may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the party upon which the demand for arbitration is served asserts that the controversy or any part thereof is not arbitrable, or that the Board of Arbitrators has no jurisdiction of the controversy or any part thereof, or fails to select its arbitrator within the time limit provided herein, the other party may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the Board rules it has no jurisdiction over the dispute, then each party is relieved of its obligation to further delay taking any action at law or in equity which it may desire to take.

Nothing herein contained shall be deemed to preclude a party asserting an issue of arbitrability or lack of jurisdiction from obtaining a determination by a court of such issue under applicable law.

(ii) Except as otherwise provided in this agreement a majority of the three (3) arbitrators, or by consent of the parties hereto, the third arbitrator acting alone may make any appropriate award, permitted hereunder, including damages, subject to the limitations set forth in Article 19, and such award shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such award shall also be binding on the composer or composers involved.

(iii) All arbitrators selected by the parties hereto may be interested persons but not personally or directly interested in the matter in dispute. The third arbitrator shall be a disinterested person.

(iv) If an arbitrator cannot serve, a substitute shall be selected in accordance with the provisions of (i) above.

(b) Hearing Procedure.

The Conciliation Committee and the Board of Arbitration shall adopt such rules of procedure and conduct their proceedings in such manner as they shall determine to be proper provided, however, that in any event each party to any conciliation or arbitration shall be afforded a reasonable opportunity to present evidence and argument to the Committee or the Board, as the case may be.

All hearings, deliberations and proceedings of the Board of Arbitration and the Conciliation Committee hereinabove mentioned shall be closed to the public and shall be absolutely privileged. Only members of the Guild and Producers signatory hereto and their authorized representatives or witnesses called may attend. All communications to and from the Board of Arbitration or the Conciliation Committee shall likewise be absolutely privileged.

The authorized list of arbitrators approved by the parties hereto is as follows:

Ben Aaron	Dean Richard Maxwell
Seymour Bricker	Addison Mueller
Arthur Carstens	Spencer Pollard
Dean Orrin D. Evans	Thomas T. Roberts
Sidney Justin	Murray Schwartz

Such list shall be revised by mutual consent from time to time.

(c) Time Limits:

(1) Proceedings under this Article 18 shall be commenced no later than eighteen (18) months after the grieving party has obtained knowledge of the facts upon which the claim is based.

(2) If proceedings under this Article 18 are not commenced within the time period specified in (1), such grievance shall be deemed to be waived. All time limits provided in this article may be extended by mutual written agreement of the parties to the difference or dispute.

(d) Costs:

Each party shall pay the costs of its members of the Conciliation Committee and the Board of Arbitration. The fees and expenses of the third arbitrator (unless otherwise provided by the Board) and the cost of a court reporter or a transcript (if ordered by the arbitrator), shall be shared equally. All other costs and expenses of conciliation or arbitration shall be borne by the party incurring the same.

(c) Award:

The award of the Committee and the Board of Arbitration (or, if agreed to by the parties, of the third impartial arbitrator) shall be in writing and shall be limited in subject matter and remedies as provided in this agreement.

(f) Parties.

In any conciliation or arbitration hereunder only the Producer and the Guild shall be parties except that in any conciliation or arbitration pursuant to subsection (a) (3) of Article 19 the Guild and the composer or composers involved shall be jointly a party, and may be represented by joint counsel.

Article 19 Matters Subject to Conciliation and Arbitration

(a) Except as otherwise provided in this Article 19, the following matters shall be submitted to conciliation and thereafter to arbitration as herein provided, and no other matters may be submitted to conciliation or arbitration:

(1) Any difference or controversy between the Guild and the Producer concerning the interpretation of any of the terms of this agreement and the application and effect of such terms as determined by an interpretation thereof;

(2) Any alleged default or breach of any of the terms or provisions of this agreement by the Guild or Producer, except that violations of credit provisions, to the extent they are arbitrable, shall be subject to the following conditions and limitations:

If the Committee decides or the Board awards that any such credit provision has been violated the Committee or Board shall have jurisdiction only to make a prospective decision or award and shall have no jurisdiction toward damages, penalties, or any monetary amount, or to require the Producer to change or redo any film titles. No award in any conciliation or arbitration determining a question as to credits shall affect or be used or be admissible in any other action or proceeding of any nature whatsoever, but any court of competent jurisdiction may confer, set aside or modify any conciliation or arbitration award hereunder in any proceeding brought for such purpose in accordance with applicable law.

(3) Any claim by the Guild and a composer or composers on the one hand against the Producer on the other hand for unpaid compensation (hereinafter referred to as "salary") under the composer's or composers' individual employment agreement with the Producer, excluding, however, any claim not related to his or their employment as a composer or composers and subject to the following conditions and limitations:

(i) Conciliation and arbitration proceedings shall be initiated by the Guild on behalf of the composer. The Conciliation Committee and Arbitration Board shall not have jurisdiction to consider any unpaid salary claim which exceeds a sum equal to double the minimum rates provided in Article 20.

If the unpaid salary claim exceeds said sum, said claim may nevertheless be submitted to conciliation and arbitration, but by such submission the Guild and the composer whose claim is involved thereby shall waive and shall have no further claim or right with respect to any amount by which the unpaid salary involved exceeds the sum of double minimum, provided, however, that nothing contained in this sentence shall be construed to constitute a waiver of any rights under Article 18 (c) (i).

(ii) Claims for unpaid salary hereunder cannot be split and the double minimum rates limitation cannot be avoided by commencing more than one (1) separate conciliation or arbitration proceeding with respect to unpaid salary.

(iii) In any conciliation or arbitration proceeding with respect to a claim for unpaid salary, the Producer may, but need not, assert any and all defenses, counterclaims and set-offs, including any defenses based on a claim of suspension or termination. In any arbitration proceeding with respect to a claim for unpaid salary, the Producer shall assert any and all counterclaims and set-offs relating to the same salary dispute, provided, however, that if the amounts claimed by the Producer in the conciliation or arbitration exceed the sum of double minimum rates the Producer shall have the option of submitting all such counterclaims or set-offs to conciliation and (whether or not submitted to conciliation) to arbitration or to institute an action at law or in equity with respect to such counterclaims or set-offs. Nothing contained in this paragraph shall be construed to constitute a waiver of any rights or obligations under Article 18 (c) (i). Producer's rights and obligations to raise defenses, counterclaims and set-offs shall be subject to the provisions of subsection (a) (4) of this Article 19.

The institution of any such action by the Producer shall not stay any arbitration proceeding brought by the Guild and composer for unpaid salary as above provided, nor shall any such conciliation or arbitration proceeding stay any action instituted by the Producer upon any matter. Producer is not required to submit in arbitration as a set-off or counterclaim, whether or not such action is instituted prior to the submission by the composer of the unpaid salary claim to conciliation and arbitration.

(iv) If the claim for unpaid salary arises out of services rendered by a composer in connection with one (1) or more but not all of the motion pictures in connection with which the composer is to render services under his individual employment agreement, the Committee and Guild shall have no jurisdiction to entertain or award any claims relating to any services in connection with any motion pictures other than the motion picture or motion pictures as to which the unpaid salary claim is asserted unless a defense, set-off or counterclaim is asserted with respect to such other motion picture or motion pictures.

(v) Any decision made or award rendered in conciliation or arbitration pursuant to this subsection (3) shall insofar as any payment of money is concerned, be limited to deciding or awarding what amount, if any, is due the composer from the Producer on account of unpaid salary, to the limit specified, and what amount, if any, is due the Producer from the composer on account of any set-off or counterclaim asserted by the Producer in such conciliation or arbitration.

(vi) If a claim for unpaid salary under an individual employment agreement is submitted to conciliation or arbitration, any claim of a breach or default of this agreement arising out of or connected with said claim for unpaid salary must be submitted for conciliation and arbitration together with the claim for unpaid salary, and failure to so submit such claim shall constitute a waiver of any and all rights to assert such claim thereafter.

(4) Except as hereinabove in Article 18 (a) and subsection (a) (3) of this Article 19 provided, it is expressly understood and agreed that there is to be no conciliation or arbitration of any individual disputes between the Producer and any composer and that no determination or decision made by the Conciliation Committee or by arbitration, as herein provided, shall affect the rights of the Producer as against any composer nor the rights of any composer as against any Producer, but shall only control and be binding upon the Producer and the Guild in relation to their rights as against each other. Controversies under individual employment agreements involving (i) Producer's rights of suspension and termination, (ii) Producer's right to seek or obtain injunctive relief or specific performance, (iii) any of the warranties or grants of rights made by the composer under such individual employment contract, or (iv) any of the rights of the Producer to any literary or musical material, shall not be subject to conciliation or arbitration and any decision in conciliation or award in arbitration purporting to determine or affect any of the aforementioned matters shall, to that extent, be of no force or effect whatsoever, provided, however, that if the Producer asserts in any conciliation or arbitration any defense, counter-claim or set-off involving or based upon any claim of suspension or termination, the same shall be determined in such conciliation or arbitration proceeding.

(5) The Conciliation Committee and the Board of Arbitration shall have jurisdiction to determine only such claims or controversies as are submitted for conciliation or arbitration in accordance with Article 18 hereof, subject to the limitations upon the powers of said Committee and Board under this Article 19. Neither the Committee nor the Board shall have the authority to reform, amend or extend the express terms and provisions of this agreement or to reform, amend or extend the express terms and provisions of any individual employment agreement between the Producer and any composer.

(b) Court Proceedings

(1) Nothing contained in this agreement shall limit the rights of the Guild or of any composer to assert any and all appropriate legal and equitable rights and remedies to which the Guild or such composer is entitled in courts of competent jurisdiction with respect to breaches of Article 6 of this agreement for composing credit, subject, however, to the following conditions and limitations with respect to the Guild:

(i) If the Guild commences any action or proceeding in court with respect to any such alleged breach prior to the submission of the matter to conciliation or arbitration hereunder, then the Guild may not submit such matter to conciliation or arbitration and neither the Committee nor the Board shall have any jurisdiction to consider the alleged breach of such credit provision.

(ii) If the Guild commences any action or proceeding in court with respect to any such alleged breach after the submission of the matter to conciliation or arbitration hereunder, then the only right and remedy which the Guild shall have available to it in any such court action or proceeding shall be a recovery of such damages as the Guild may have suffered by reason of such breach. In such event, the conciliation or arbitration and the action or proceeding in court may both proceed at the same time.

(iii) Any such court action or proceeding with respect to such grievance must be commenced by the Guild, if at all, within the eighteen (18) month time period specified in Article 18 (c) hereof.

(2) * With respect to unpaid salary claims which are then arbitrable pursuant to the provisions of this agreement, the composer, at his option, need not proceed by conciliation and arbitration but instead may proceed to institute an action at law or equity with respect to such claims prior to a decision in conciliation or the submission of such claim to arbitration. Provided, however, that nothing contained in this paragraph shall be construed to constitute a waiver of any rights under Article 18(a)(1).

(3) Nothing contained in this agreement shall impair or affect or limit the right of the Producer, the Guild or any composer covered by this agreement to assert and exercise any and all appropriate legal or equitable rights or remedies to which such Producer, Guild or composer is entitled in any court of competent jurisdiction as to any matter which is not made subject to conciliation and arbitration pursuant to this Article 19. Nor shall anything contained in this agreement in any way affect the right of the Producer to suspend or terminate a composer for unsatisfactory performance with respect to any individual employment agreement with a composer, or in any way affect any rights of the Producer with respect to the warranties and grants of right made by a composer under an individual employment agreement, or in any way affect the Producer's right to suspend or terminate a composer under an individual employment agreement, except as provided in Paragraph (a)(4) above.

(4) Nothing herein contained, however, shall preclude any court of competent jurisdiction from confirming, setting aside or modifying any conciliation or arbitration award hereunder in any proceeding brought for any such purpose in accordance with applicable law. The Guild shall have the right to conciliate and arbitrate a claim of the Guild of a default or breach by the Producer of any of the terms or provisions of this agreement, including a failure to pay minimum compensation, regardless of whether or not such claimed default or breach may also involve a breach by the Producer of a contract of employment, and such proceeding shall not affect the right of the composer to pursue his own remedies at law or in equity, except as limited by the provisions of this agreement.

Article 20 Minimum Compensation

(a) Definition of a qualified composer and song writer.

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture, three one-half (1/2) hour or one one-hour (1) or more in length television motion picture, or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation:

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation per week for a qualified composer for composition only, shall be:

	<u>Television Motion Pictures</u>	<u>Theatrical Motion Pictures</u>
Term contract:	\$357.50	\$393.25
Week to week	\$385.00	\$423.50

The above salary shall commence and apply when an assignment is made under the Producer's direction and control. The above television weekly rate shall apply in term or week-to-week employment in any week in which no work hereunder is performed in a theatrical motion picture, in any week in which such work is performed in both theatrical and television motion pictures the theatrical motion picture rate will apply for that week. For these purposes, a term contract is a personal service contract for a term of not less than thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional

amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek (of less than six (6) days), one-fifth (1/5) for each such day worked during which the composer shall render such additional services. In any week of employment when the Producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by Producer for composition.

(3) In the alternative, when the employment for composition, excluding songs, is for television films only, and it is non-exclusive employment, the minimum compensation shall be:

- a) Not less than \$192.50 for a half-hour show.
- b) Not less than \$385 for a one-hour show.
- c) Not less than \$550 for a one and one-half hour show.
- d) Five minutes or less of new music, not less than \$100.

The above rates of \$192.50 for a half-hour show, \$385 for an hour show, and \$550 for a one and one-half hour show shall be applicable where more than five minutes of new music is composed for a program.

Where more than five minutes of new music is composed and more than one composer is employed, the combined payments to such composers shall be not less than \$192.50 for a half-hour show or \$385 for an hour show. In no event shall a composer who composes five minutes or less of new music, under such circumstances, be paid less than \$100 if he composed "a five minute or less fragment."

(4) The minimum compensation for employment for the composition of songs shall be governed by the theatrical rate provisions of (b) (2) of this article only.

(5) Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments (except royalties provided for by Article 21) required under this agreement.

(6) Theatrical Exhibition of Television Films:

In the event a television motion picture or pictures containing music composed on or after the effective date of this agreement, under the provisions of Article 20 (b) (3) above, is exhibited theatrically (as one or in combination) Producer shall pay to the composer or composers of such music, so used, in such exhibition, the following applicable single amount for an unlimited number of such exhibitions:

The amount, if any, that (i) \$300 exceeds the compensation paid such composer or composers for a half hour show so used; or (ii) \$770 exceeds the compensation paid such composer or composers employed for a one hour show so used; or (iii) \$1,155 exceeds the compensation paid such composer or composers employed for a one and one-half hour show so used; or (iv) \$45 exceeds the compensation paid such composer or composers employed for each minute of a 11 minute or less fragment so used.

If the Producer shall sell, assign, transfer or otherwise dispose of its theatrical exhibition rights in any such television film or shall license the distribution rights to such theatrical exhibition, Producer shall be responsible, or shall require its purchaser or licensee to become responsible for compliance with this provision relating to the initial theatrical exhibition of the film. Upon obtaining such agreement from such purchaser or licensee, Producer shall be relieved of further obligation hereunder, provided Producer sends to the Guild, within 30 days thereafter, a copy of such assumption agreement.

(7) Unused Music:

With respect to theme music or songs intended to be used in a television pilot film, if such pilot is not made within three (3) years after the composition of the theme music or song is completed, the composer of such theme music or song will have a twelve-month option period, commencing with the end of such three-year period within which to purchase back all rights in such theme music or song, at the Producer's cost. If the composer does not exercise such option in such option period, such option shall thereupon be terminated. If Producer uses such theme music or song in a pilot or otherwise exploits the theme music or song before the composer has completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such theme music or song in the particular pilot for which the theme music or song was composed, or in any series based on such pilot.

With respect to songs, if the song intended to be used in a motion picture, other than television pilot films, is not used or otherwise exploited, within five (5) years after the composition of the song is completed, the composer will have a thirty-six month option period commencing with the end of such a five-year period within which to purchase back all rights in such song, at the Producer's cost. If the composer does not exercise such option in such option period such option shall thereupon be terminated. If Producer uses such song in a motion picture, or otherwise exploits it, before the composer completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such song in motion pictures.

Costs shall be deemed to be the amount Producer paid to the composer for such musical composition, plus fringe benefits and taxes. The composer shall receive back only the music as written in the manuscript delivered to the Producer.

Article 21 Publication Royalties

Should the Producer, or any subsidiary or affiliated company, or any assignee or licensee of Producer, exploit the music or musical composition (hereinafter referred to as the "composition") then the Producer, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to the composer an amount of royalty with respect to such composition not less than the following, and Producer's contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if Producer's contract does so provide then Producer shall not be responsible for payment of the royalties hereunder:

(a) Five cents (5¢) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octaves, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to the composer not less than ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octaves, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to the composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2%) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to the composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period, bears to the number of uses of any of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that the composer(s) shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as licensing agent), the publisher, in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensee, a sum equal to the charges paid by the publisher to said licensing agent.

(h) "Publisher" as used in this Article 21 shall mean the original Publisher.

The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by one composer, or in cases in which a musical composition has been composed for which no lyrics have been written.

As to songs, if one person composes the music and another the lyrics, the foregoing rates shall apply, but one-half shall be allocated to the composer of the music and one-half to the author of the lyrics (no allowance being made for the fact that where there shall be more than one composer or more than one lyricist, they shall agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them).

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the composer, it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by the Producer or by the independent producer for whom the composition was originally composed (or by its or their associated, affiliated, parent or subsidiary corporations or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television, exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicising or exploitation thereof. Nothing in this agreement shall be construed to obligate the Producer or its licensees or assigns to publish, record, reproduce or otherwise exploit any music or musical composition.

Article 21A Recognition Agreement

The Guild agrees that it will take proper steps to provide that its by-laws shall be in agreement into effect and that, during the term of this agreement, it will not maintain or adopt any articles or by-laws or any rules or orders which will be in conflict with this agreement. The Guild shall cause its by-laws to provide that each of its members shall be bound by the provisions of this agreement. The Guild represents and warrants that at all times during the term hereof it will have exclusive jurisdiction over the matters and procedure necessary to carry out the purposes and intent of the foregoing provisions of this Article 21A and over all other covenants and agreements to be kept or observed by the Guild pursuant to this agreement. The Producer will not either alone or in concert with any other Producer signatory to a similar agreement with the Guild take any action of any kind that will interfere with the performance of this agreement on the part of the Producer or violate the provisions of this agreement.

Article 22 Agreement Binding Upon Them

This agreement shall be binding upon the Producer and its subsidiaries in which it has a fifty percent (50%) or more financial interest and all parties who by reason of mergers, consolidations, reorganizations, sale, assignment or the like shall succeed to or become entitled to a substantial part of the business of Producer.

Producer agrees to notify the Guild within seven (7) days after it executes an agreement with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the use of its studio for the production of a theatrical or television motion picture. Producer further agrees to notify the Guild within fourteen (14) days after it executes an agreement in the County of Los Angeles, California, with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the production of a theatrical or television motion picture in the United States where Producer's studio is not used for the production of such picture in the United States, such notice to the Guild shall contain the name and address of such person, firm or corporation as well as the name of the person who signed the agreement on behalf of such person, firm or corporation. An inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer or a breach of this agreement.

Article 23 Motion Pictures To Which Agreement Not Applicable

It is understood that the provisions of this agreement shall not apply to newsreels, shorts, advertising shorts, trailers, travelogues, commercial films or news or sports commentation.

Article 24 Geographical Application of this Agreement

Notwithstanding anything in the contrary herein contained it is specifically understood that this agreement shall apply to composers residing in the United States whose contracts of employment were executed within the continental limits of the United States (including Alaska and Hawaii), regardless of the place of performance of services thereunder, or to any composers who perform their services in the United States (including Alaska and Hawaii), regardless of the place their contracts were executed, and shall apply only to such contracts of employment.

Article 25 Minimum Terms

The terms of this agreement for the benefit of the composer are minimum terms; nothing herein contained shall prevent any composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided. Only the Guild shall have the right to waive any of the provisions of this agreement on its own behalf or on behalf of or with respect to any individual composer. Such waiver shall be in writing.

Article 26 Producer-Composer Cooperative Committee

Within fifteen (15) days after the execution of this agreement there shall be established a committee to be known as the Producer-Composer Cooperative Committee, composed of not less than sixteen (16) members representative of the Producer and the composer, eight (8) of whom shall be named by the Producer hereto and eight (8) named by the Guild. It is understood that a group of seven (7) or more Producer signatories hereto may establish a separate committee for the purposes hereto, and the Guild will name members to meet with each such committee. Such committee or committees shall meet at least once every sixty days. All relations shall be wholly informal and any and all matters affecting interpretation and application of this contract, and the promotion of a harmonious Producer-Composer relationship shall be fully and freely discussed. Every effort shall in good faith be made by all members of the committee to prevent animosity from arising and to work to eliminate inequities and to promote cooperation between and understanding of the problems of employer and employee.

Article 27 Jurisdictional Disputes

The Guild agrees to cooperate in good faith with the Producer and with other guilds and organizations representing employees of the Producer in working out a method for the determination of jurisdictional disputes without work stoppages.

Article 28 Pension Plan

Producer and the Guild are parties to, and bound by the provisions of the "Motion Picture Industry Pension Plan" (hereinafter referred to as the "Pension Plan") made as of October 26, 1953, with respect to the employees covered hereunder.

In accordance with Article III, sections 2 and 3, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, the Producer shall, for the period commencing with _____, and for the balance of the term of this agreement pay into the Pension Plan a total of fourteen dollars and one cent (\$14.01) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after _____ under the terms of this agreement, excluding layoffs, suspension or vacations, or two dollars and eighty-five cents (\$2.85) for each week day worked or guaranteed in a fractional workweek.

In accordance with Article III, sections 4 and 5, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, every employee covered by this agreement shall, for the period commencing with _____, and for the balance of the term of this agreement pay into the Pension Plan eight dollars and eighty-six cents (\$8.86) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer on or after _____, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and eighty cents (\$1.80) for each such weekday worked or guaranteed such employee in a fractional workweek. On and after _____, Producer shall deduct daily or weekly from the compensation of such employees, as the case may be, the amount of such contribution due from such employee, as above provided, which deduction shall be paid by Producer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan, as herein required.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment, a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by Employers and Employees required under the Pension Plan. In the event the present pattern of contributions under the Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of Employer and Employee contributions established under such Pension Plan.

Such money paid by Producer into the Pension Plan, shall not constitute nor be deemed to be wages due to the individual employee subject to this agreement, nor shall said money paid into the Pension Plan, in any manner be liable for or subject to the debts, contracts, liabilities or torts of such employee.

Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above.

Article 29 Industry Pension Plan Retirees Health and Welfare Coverage

Producer shall for the period commencing , and for the balance of the term of this agreement, pay into the Industry Pension Plan through its Administrator, as Agent for transmittal to the Industry Health and Welfare Fund, the following:

One dollar and seventy-six cents (\$1.76) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer, on or after , under the terms of this agreement, excluding layoffs, suspensions or vacations, or thirty-six cents (36¢) for each such weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of such contributions by employers to the Industry Pension Plan Administrator. In the event the present pattern of such contributions to the Industry Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions as indicated by such Industry Pension Plan.

The money received by the Administrator of the Industry Pension Plan from such payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall be paid to the Industry Health and Welfare Fund upon demand by the Health and Welfare Fund. The Health and Welfare Fund shall establish a special reserve fund into which such money shall be placed for the purpose of providing, under proper conditions, for such Health and Welfare coverage as the Trustees of the Health and Welfare Fund may determine to be appropriate for the employees retired under the Industry Pension Plan.

Such money paid by Producer to the Administrator of the Industry Pension Plan for transmittal, shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid into the Industry Pension Plan, in any manner, be liable for or subject to the debts, contracts, liabilities, or torts of such employees.

Producer shall be obligated to make such contribution to the Administrator of the Industry Pension Plan for transmittal, for any such respective employee, as provided above, only as, and if such respective employee has contributed to the Industry Pension Plan, the amount, and within the time required of him, as provided above in Article 28.

Article 30 Health and Welfare Fund

Producer and the Guild agree to immediately make application to become parties to, and if accepted, to be bound by the provisions of the "Motion Picture Health and Welfare Fund" (hereinafter referred to as the "Welfare Fund"), made on or about 1952, with respect to the employees covered hereunder.

In accordance with Article V, sections 1 and 2, of the Welfare Fund the Producer shall, during the term of this agreement, for the period commencing with , and for the balance of the term of this agreement, pay into the Health and Welfare Fund total of twelve dollars and eighteen cents (\$12.18) for each full

workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after under the terms of this agreement, excluding layoffs, suspensions or vacations, or two dollars and forty-eight cents (\$2.48) for each weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one-hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by employers required under the Welfare Fund. In the event the present pattern of contributions under the Welfare Fund should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions established under such Welfare Fund.

Article 31 Pay Television

For the purpose of this agreement "theatrical exhibition" shall be deemed to include any form of pay television.

If, during this contract, a pay television system is established in the United States and Producer releases any motion pictures on pay television (other than for test or experimental purposes) and the Guild claims that as a result thereof there has been a material increase in theatrical film rentals of such Producer, the Guild, on sixty (60) days' advance written notice given thereafter, may reopen this contract with respect only to the adjustment of theatrical minimum rates of compensation thereafter payable. In the event the parties are unable to reach an agreement within a sixty-day period following the commencement of such negotiations, the Guild may instruct its members to withhold services with respect to the production of such motion pictures as to such Producers.

Producer agrees that prior to the employment of any composer for a motion picture intended primarily for exhibition on Pay TV, other than for tests or experimental purposes, Producer shall give at least sixty days' advance notice to the Guild of such proposed employment. Producer and the Guild agree to meet within thirty (30) days from receipt of such notice for the purpose of negotiating with respect to the terms and conditions for such employment. If no agreement is reached with respect thereto within such sixty-day period, the Guild may, upon a thirty-day written notice to Producer, instruct its members to withhold services with respect to the production of such motion picture.

Article 32 Contract Services Administration Trust Fund

Producer shall for the period commencing February 1, 1965, and thereafter for the balance of the term hereof, pay to the Industry Pension Plan through its Administrator, as Agent for transmittal to the Contract Services Administration Trust Fund, the following:

One cent (1¢) for each work hour (*see footnote) guaranteed an employee by such Producer or full workweek worked by an employee hereunder for such Producer on or after (on the same weekly and daily formula as the contributions paid under the Retired Employees Health and Welfare Fund).

* EFFECTIVE FEBRUARY 1, 1970 1½¢ per hour.

CLGA

-30-

* EFFECTIVE JULY 1, 1970 to and including JANUARY 31, 1971 - 2½¢ per hour.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment, a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

This Fund to be used for the administration of apprenticeship and other training programs within the motion picture industry; maintenance of appropriately classified and delineated seniority rosters within the motion picture industry; administration of safety programs and studies within the motion picture industry; administering and financing physical examinations in connection with any uniform industry retirement programs; and generally for the carrying on of similar such programs for the administration of other industry-wide services, studies or education.

The money received by the Administrator of the Industry Pension Plan from such three fourths of one cent (3/4¢) payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall forthwith be paid to the Contract Services Administration Trust Fund.

Such Trust Fund shall be administered by a Board of Trustees, who shall be appointed by the Association of Motion Picture and Television Producers, Inc.

Such money so paid by Producer shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid be in any manner, liable for or subject to the debts, contracts, liabilities or torts of such employees.

Article 33 Significance of Titles and Sub-Titles

The headings of articles, sections and other subdivisions hereof are inserted for the purpose of convenient reference, and it is recognized that they may not adequately or completely describe the contents of the provisions that they head. Such headings shall not be deemed to govern, enlarge, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

Article 34 Reports

Producer will submit written reports to the Guild on payments hereunder, for composition on television and theatrical motion pictures, except that such reporting shall not be required in the case of staff composers. Staff composers are regular employees whose duties may include services other than composing.

Article 35 Non-Discrimination

The parties mutually reaffirm their policy of non-discrimination. The Producer reaffirms its policy that no employee shall be discriminated against in employment hereunder, because of race, color, creed, sex, or national origin. The Guild reaffirms its policy of non-discrimination with respect to admission to membership and rights of membership.

Article 36 Severability

If any provision of this agreement shall, during the term hereof, be held void or unenforceable, all other provisions hereof shall continue in full force and effect.

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

It is not the intent of this agreement to impede or prevent the settlement of a claim under this paragraph which would bind the composer, in cases where the composer, having given warranties and indemnifications, unreasonably withholds his consent.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

COMPOSERS AND LYRICISTS GUILD
OF AMERICA

By

David Kohn

The Above-Mentioned PRODUCERS,
Separately and Respectively:

By

Charles Boren

CBS v. ASCAP

ASCAP Exhibit No. 326

Gitter Affidavit dated 6/17/74 in this action.

E1564

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
COLUMBIA BROADCASTING SYSTEM, INC.,
:
Plaintiff, 69 Civ. 5740 (M.E.L.)
:
-against- AFFIDAVIT
:
AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, et al.,
:
Defendants. EXHIBIT
: U. S. DIST. COURT
: S. D. OF N. Y.
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MAX GITTER, being sworn, states:

1. I am associated with Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendants American Society of Composers, Authors and Publishers ("ASCAP"), et al. I submit this affidavit pursuant to the Court's direction at the post-trial conference of March 21, 1974 that the parties present affidavits concerning their conclusions from CBS' production of documents relating to "music in the can." Counsel for CBS have submitted an affidavit of Robert K. Baker (PX 995), describing that production and designating certain provisions in contracts between CBS and its producers, and counsel for BMI have submitted an affidavit of George A. Davidson, sworn to June 3, 1974 designating certain other such provisions.

2. We intend to make no further designations of such contractual provisions, and I do not quarrel with Mr. Baker's description of the CBS document production on January 18, 1974 and February 26, 1974.

3. I would like here to set forth, however, what was not set forth in Mr. Baker's or Mr. Davidson's affidavit: the material that we requested of CBS and that was not produced.

4. First, with respect to CBS' dollar valuation of the inventory "in the can": as is clear from Mr. Baker's affidavit, CBS' "valuation" of the inventory of the non-motion picture programs calculated the value of "reruns" not on the basis of their cost to CBS, but on the basis of some measure of expected advertising revenues associated with the broadcast of such reruns. Such a calculation, we submit, substantially overstates the "value" of that portion of the inventory. In a very rough calculation of the difference between the cost of the rerun episodes to CBS and the "value" placed upon them by CBS, we estimated that the value of the entertainment program portion of the CBS inventory is overstated by at least 50% -- i.e., CBS' figure of \$13 million should be reduced by at least \$5 million.

5. The "values" or "accounting balance" assigned by CBS to its on-hand inventory of feature films also was suspect, since we were not advised how this material is treated on CBS' books in the ordinary course of business.

6. Accordingly, I asked Mr. Baker to advise us how the "inventory" is treated by CBS, in the ordinary course of its business, for balance sheet, income and loss statement, and federal income tax purposes.

7. CBS refused to supply that information.

8. Another way in which to determine whether the values CBS assigned to the programs in the inventory are appropriate would be to see what price might be paid by other television networks for the purchase of such an inventory. Accordingly, I asked whether any programs have been purchased or sold by CBS from or to any of the other networks in the past few years, and, if so, the sales prices for such programs. CBS refused to disclose that information.

9. I asked also for information which would permit us to determine how much of the inventory of feature films ordinarily would be used up in a year. The contracts for those films typically provide that they may be broadcast within a certain period following the acquisition of the broadcast rights to the films, but CBS refused to disclose the period during which, historically, a given inventory of films ordinarily would be used up.

10. A review of the contracts produced shows that approximately 90% of the inventory was acquired since the commencement of this lawsuit -- not 75%, as previously had been stated by CBS.

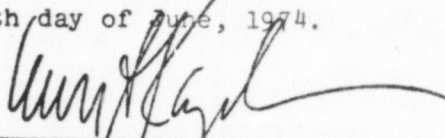
11. I should state, furthermore, that the balances and other data shown to me setting forth the inventory were prepared after the close of the trial in December, 1973 -- not in May, 1973, when Mr. Sipes testified that the inventory exceeded \$100,000,000.

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12. Lastly, the total inventory "value" submitted to us by CBS, was not \$100,000,000, but approximately \$95,000,000. It is our position, as I indicated above, that this number very substantially overstates the "value" of the inventory, but since we were not supplied with information that would permit us properly to conclude what the true "value" is, we cannot estimate the extent of the over-valuation.


Max Gitter

Sworn to before me this
17th day of June, 1974.


Notary Public

LEWIS A. KAPLAN
Notary Public, State of New York
No. 60-7158700
Qualified in Westchester County
Commission Expires March 30, 1976

E1568

CBS v. ASCAP

BMI Exhibit No. 114

BMI Consent Decree dated December 29, 1966.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BROADCAST MUSIC, INC. and
RKO GENERAL, INC.,*Defendants.*Civil No.
64-Civ-3787

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 10, 1964, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party with respect to any such issue:

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Defendant" means the defendant Broadcast Music, Inc., a New York Corporation;

(B) "Programming period" means a fifteen minute period of broadcasting commencing on the hour and at fifteen, thirty and forty-five minutes past the hour without regard to whether such period contains one or more programs or announcements.

III.

The provisions of this Final Judgment shall apply to defendant and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply outside the United States of America, its territories, and possessions.

IV.

Defendant is enjoined and restrained from:

(A) Failing to grant permission, on the written request of all writers and publishers of a musical composition including the copyright proprietor thereof, allowing such persons to issue to a music user making direct performances to the public a non-exclusive license permitting the making of specified performances of such musical composition by such music user directly to the public, provided that the defendant shall not be required to make payment with respect to performances so licensed.

!(B) Engaging in the commercial publication or recording of music or in the commercial distribution of sheet music or recordings.

V.

(A) Defendant shall not refuse to enter into a contract providing for the licensing by defendant of performance rights with any writer who shall have had at least one copyrighted musical composition of his writing commercially published or recorded, or with any publisher of music actively engaged in the music publishing business whose musical publications have been commercially published or recorded and publicly promoted and distributed for at least one year, and who assumes the financial risk involved in the normal publication of musical works; provided, however, that defendant shall have the right to refuse to enter into any such contract with any writer or publisher who does not satisfy reasonable standards of literacy and integrity if the defendant is willing to submit to arbitration in the County, City and State of New York the reasonableness and applicability of such standards, under the rules then prevailing of the American Arbitration Association, with any writer or publisher with whom defendant has refused so to contract.

(B) Defendant shall not enter into any contract with a writer or publisher requiring such writer or publisher to grant to defendant performing rights for a period in excess of five years, provided, however, that defendant may continue to license, as if under the contract, all musical compositions in which the defendant has performing rights at the date of termination of any such contract until all advances made by defendant to such writers and publishers shall have been earned or repaid.

(C) Upon the termination, at any time hereafter, of any contract with a writer or publisher relating to the licensing of the right publicly to perform any musical composition, defendant shall continue to pay for performances of the musical compositions of such writer or publisher licensed by defendant upon the basis of the current performance rates generally paid by defendant to writers and publishers for similar performances of similar compositions for so long as such performing rights are not otherwise licensed.

VI.

(A) Defendant shall not acquire rights of public performance in any musical compositions from any publisher under a contract which requires the officers, directors, owners or employees of such publisher to refrain from publishing or promoting musical works licensed through another performing rights organization, provided that nothing contained in this paragraph shall prevent defendant from entering into a contract with a publishing entity which requires such entity not to license any performance rights through any other performing rights organization during the term of the contract, and requiring that any works licensed by such officers, directors, owners or employees through another performing rights organization be licensed by a separate publishing entity which does not have a name identical with or similar to the name of any publishing entity with which defendant has contracted.

(B) Defendant shall not enter into any agreement for the acquisition or the licensing of performing rights which requires the recording or public performance of any stated amount or percentage of music, the performing rights in which are licensed or are to be licensed by defendant.

VII.

(A) Defendant shall make available at reasonable intervals, to all writers and publishers who have granted performance rights to it, a complete statement of the performance payment rates (to writers, those applicable to writers, and to publishers, those applicable to publishers), currently utilized by it for all classifications of performances and musical compositions.

(B) Defendant will not offer or agree to make payments in advance for a stated period for future performing rights which are not either repayable or to be earned by means of future performance to any writer or publisher who, at the time of such offer or agreement, is a member of or under direct contract for the licensing of such performing rights with any other United States performing rights licensing organization, provided that this restriction shall not apply (1) in the case of any such writer or publisher who at any time prior to said offer or agreement had licensed performing rights through defendant or (2) in the case of any such writer or publisher who is a member of or directly affiliated with any other United States performing rights licensing organization which makes offers or makes payments similar to those forbidden in this subparagraph to writers or publishers then under contract to defendant.

(C) Defendant shall include in all contracts which it tenders to writers, publishers and music users relating to the licensing of performance rights a clause requiring the parties to submit to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association, all disputes of any kind, nature or description in connection with the terms and conditions of such contracts or arising out of the performance thereof or based upon an alleged breach thereof.

VIII.

(A) Defendant shall not enter into, recognize as valid or perform any performing rights license agreement which shall result in discriminating in rates or terms between licensees similarly situated; provided, however, that differentials based upon applicable business factors which justify different rates or terms shall not be considered discrimination within the meaning of this section; and provided further that nothing contained in this section shall prevent changes in rates or terms from time to time by reason of changing conditions affecting the market for or marketability of performing rights.

(B) Defendant shall, upon the request of any unlicensed broadcaster, license the rights publicly to perform its repertory by broadcasting on either a per program or per programming period basis, at defendant's option. The fee for this license shall relate only to programs (including announcements), or to programming periods, during which a licensed composition is performed. The fee shall be expressed, at defendant's option, either (1) in dollars, (2) as a percentage of the revenue which the broadcaster received for the use of its broadcasting facilities or (3), in the case of sustaining programs or programming periods, as a percentage of the applicable ~~cost~~ ^{rate} had the program or programming period been commercially sponsored. In the event defendant offers to license broadcasters on bases in addition to a per program or per programming period basis, defendant shall act in good faith so that there shall be a relationship between such per program or such per programming period basis and such other bases, justifiable by applicable business factors including availability, so that there will be no frustration of the purpose of this section to afford broadcasters alternative bases of license compensation.

IX.

(A) Defendant shall not license the public performance of any musical composition or compositions except on a basis whereby, insofar as network broadcasting by a regularly constituted network is concerned, the issuance of a single license, authorizing and fixing a single license fee for such performance by network broadcasting, shall permit the simultaneous broadcasting of such performance by all stations on the network which shall broadcast such performance, without requiring separate licenses for such several stations for such performance.

(B) With respect to any musical composition in defendant's catalogue of musical compositions licensed for broadcasting and which is or shall be lawfully recorded for performance on specified commercially sponsored programs on an electrical transcription or on other specially prepared recordation intended for broadcasting purposes, defendant shall not refuse to offer to license the public performance by designated broadcasting stations of such compositions by a single license to any manufacturer, producer or distributor of such transcription or recordation or to any advertiser or advertising agency on whose behalf such transcription or recordation shall have been made who may request such license, which single license shall authorize the broadcasting of the recorded composition by means of such transcription or recordation by all stations enumerated by the licensee, on terms and conditions fixed by defendant, without requiring separate licenses for such enumerated stations.

(C) Defendant shall not, in connection with any offer to license by it the public performance of musical compositions by music users other than broadcasters, refuse to offer a license at a price or prices to be fixed by defendant with the consent of the copyright proprietor for the performance of

such specific (i.e., per piece) musical compositions, the use of which shall be requested by the prospective licensee.

X.

(A) Defendant shall not assert or exercise any right or power to restrict from public performance by any licensee of defendant any copyrighted musical composition in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; provided, however, that nothing in this paragraph shall prevent defendant from restricting performances of a musical composition in order reasonably to protect the work against indiscriminate performances or the value of the public performance rights therein or to protect the dramatic performing rights therein, or, as may be reasonably necessary in connection with any claim or litigation involving the performance rights in any such composition.

(B) Defendant, during the term of any license agreements with any class of licensees, shall not make any voluntary reductions in the fees payable under any such agreements, provided, however, that nothing herein shall prevent defendant from lowering any fees or rates to any or all classes of licensees in response to changing conditions affecting the value or marketability of its catalogue to such class or classes, or where necessary to meet competition.

XI.

For the purpose of securing or determining compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII.

All of the provisions of this Final Judgment shall become effective on the entry thereof, except as to paragraph C of Article VII, which shall not become effective until 90 days after the date of entry of this Final Judgment.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and

directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: New York, N. Y.
December 29, 1966

EDWARD C. McLEAN
United States District Judge

JUDGMENT ENTERED DECEMBER 29, 1966

JOHN J. OLEAR, JR.
Clerk

E1579

CBS v. ASCAP

BMI Exhibit No. 166

Letter from Edward Cramer (BMI) to CBS dated
October 29, 1969.

Broadcast Music Inc. 589 Fifth Avenue, New York, N. Y. 10017 212-759-1500

BX 166 ~~100~~

E1580

EDWARD M. CRAMER
PRESIDENT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

October 29, 1969

DEC 1973

Columbia Broadcasting System, Inc.
CBS Television Network
51 West 52nd Street
New York, New York

Gentlemen:

A letter Agreement dated February 26, 1965 extended the Network Television License Agreement between us for an additional term commencing March 12, 1965 and continuing until terminated by either party on sixty (60) days' notice thereof.

This letter constitutes the sixty (60) day notice required by the said Agreement of February 26, 1965, to terminate the Network Television License Agreement between us effective as of January 1, 1970.

Very truly yours,

BROADCAST MUSIC, INC.

ENC:hs

Edward M. Cramer

